

OFFICIAL TRANSCRIPT OF PROCEEDINGS BEFORE THE POSTAL REGULATORY COMMISSION

In the Matter of:)	
)	Docket No. C2009-1
COMPLAINT OF GAMEFLY, INC.)	

VOLUME #10

Date: October 14, 2010
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POSTAL REGULATORY COMMISSION

In the Matter of:)
) Docket No. C2009-1
COMPLAINT OF GAMEFLY, INC.)

Room 200
Postal Regulatory Commission
901 New York Avenue, N.W.
Washington, D.C.

Volume 10
Thursday, October 14, 2010

The above-entitled matter came on for hearing pursuant to notice, at 9:33 a.m.

BEFORE:

HON. DAN G. BLAIR, COMMISSIONER (Presiding)
HON. TONY HAMMOND, VICE-CHAIRMAN
HON. Nanci E. LANGLEY, COMMISSIONER

APPEARANCES:

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C O N T E N T S

WITNESSES APPEARING:
 TROY R. SEANOR
 NICHOLAS F. BARRANCA

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Troy R. Seanor	1736	----	----	----	----
By Mr. Levy	----	1781	----	----	----
By Mr. Costich	----	1819	----	----	----
By Mr. Levy	----	1829	----	----	----
By Mr. Mecone	----	----	1831	----	----
By Mr. Levy	----	----	----	1843	----
Nicholas Barranca					
By Mr. Foucheaux	1849	----	----	----	----
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By Mr. Foucheaux	----	----	1888	----	----

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E X H I B I T S

<u>EXHIBITS AND/OR TESTIMONY</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
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P R O C E E D I N G S

(9:33 a.m.)

COMMISSIONER BLAIR: Good morning, everyone.

This hearing will now come to order. I am Dan Blair, presiding officer in this proceeding, which is Docket No. C2009-1, the Complaint of GameFly, Inc. against the Postal Service. Joining me on the dais this morning are my colleagues, Vice Chairman Tony Hammond and Commissioner Nanci Langley.

As is our standard procedure, I will remind counsel that this hearing is being web broadcast, and in an effort to reduce potential confusion I ask that counsel wait to be recognized before speaking, and when you do speak please identify yourself when commenting.

Today we will complete the Postal Service's rebuttal case. Due to the nature of this case, a significant amount of material has been filed subject to protective conditions. Protecting confidential information remains a high priority.

While we expect witnesses to answer questions fully, I caution today's witnesses to be aware of material that may be subject to protective conditions when answering questions. If you're uncertain as to whether an answer might involve

1 revealing protected information, you may consult with
2 counsel on that limited question prior to answering.

3 If necessary, we will conduct a portion of
4 today's hearing in camera. The procedure for
5 conducting an in camera is to defer questions that
6 must involve reference to confidential material until
7 the conclusion of the day. A 15 minute recess will be
8 then taken at the end of the public session to allow
9 interested observers to become subject to an
10 appropriate confidentiality agreement. The hearing is
11 then reconvened for a separate in camera session.

12 The transcript for that separate session is
13 maintained under seal, and the in camera hearing will
14 not be web broadcast. Individuals who choose not to
15 agree to abide by the confidentiality agreement will
16 be excluded from the hearing. This process has been
17 used successfully in prior hearings in this case.

18 Before we begin, I'd like to have the
19 parties identify themselves for the record, and I'll
20 begin with the Postal Service. If you'll please
21 identify yourself?

22 MR. MECONE: James Mecone with Daniel
23 Foucheaux and Kenneth Hollies for the United States
24 Postal Service.

25 COMMISSIONER BLAIR: Thank you, Mr. Mecone.

1 Complainant's counsel?

2 MR. LEVY: David Levy, and my colleague,
3 Matt Field, will be here momentarily with the cross-
4 examination exhibits, I hope.

5 COMMISSIONER BLAIR: Okay. And then we have
6 the public representative. Mr. Costich, will you
7 please identify yourself and colleague?

8 MR. COSTICH: Rand Costich for the public
9 representative. With me is J.P. Klingenberg.

10 COMMISSIONER BLAIR: Before we get to the
11 cross-examination and testimony, we have a procedural
12 matter relating to the Presiding Officer's Ruling No.
13 40.

14 In response to Presiding Officer's Ruling
15 No. 40, the Postal Service reported they were still
16 obtaining documents to update its answer to GameFly's
17 Discovery Request 235. I'd like to ask the Postal
18 Service whether that process is complete and, if not,
19 when do you expect to have that task completed? Mr.
20 Mecone?

21 MR. MECONE: Well, the process is not
22 complete. We have produced one of the reports. We
23 produced that on Friday. As far as when we think it
24 will be complete, I guess maybe a week or two.

25 There's a high volume of documents and this

1 is a very busy season for the Postal Service, but we
2 are in the process of collecting the documents.

3 COMMISSIONER BLAIR: Thank you, Mr. Mecone.
4 It's a busy season for all of us, and I'd like to see
5 if Mr. Levy has a reply to that or a comment.

6 MR. LEVY: Well, we assumed that we would
7 not get the documents in time before this hearing. We
8 are not asking at this point to drag the witnesses
9 back for a second stay at the hearing until we've seen
10 the documents, and it may very well be that we can
11 make use of them in our rebuttal filing, the rebuttal
12 filing.

13 However, if there's going to be further
14 delay then that creates a problem with even using them
15 in the rebuttal filing, and I think the only thing we
16 can do at this point is -- you know, this case has
17 been delayed so many times -- let's wait a few days,
18 see where the Postal Service is, but if we can't have
19 them in time to use on the 21st when our rebuttal
20 testimony is due then there's going to be a problem.

21 And I don't mean the close of business on
22 the 20th. It obviously will take a fair amount of
23 time to integrate.

24 COMMISSIONER BLAIR: Thank you, Mr. Levy.
25 The bench is also concerned about the time that this

1 case has taken, and the resources that the Commission
2 has devoted to this have been substantial.

3 I would remind the parties that the filing
4 of GameFly's surrebuttal testimony is due on the 21st,
5 the Postal Service's notice of intent to conduct oral
6 cross-examination due on the 25th and then we have
7 scheduled the surrebuttal testimony on the 28th, so we
8 have a set schedule before us which we intend to
9 adhere to. However, we will be waiting to see the
10 Postal Service's responses to that order that was
11 Presiding Officer's Order No. 40.

12 With that, I would ask if there are any
13 procedural matters that counsel wish to raise with me
14 before moving on? Mr. Mecone?

15 MR. MECONE: The Postal Service has no other
16 matters right now.

17 COMMISSIONER BLAIR: Thank you. Mr. Levy?

18 MR. LEVY: Just an administrative matter
19 since we have two witnesses. I may have some
20 proprietary documents with the first witness. We had
21 some back and forth at the last hearing about whether
22 to have all of the public session with both witnesses
23 conclude before starting the proprietary session with
24 either witness.

25 And I would request that we complete each

1 witness in turn public and proprietary and then public
2 and proprietary because while it makes for dividing
3 the transcript into four volumes per day instead of
4 two, it makes getting the documents in the record a
5 lot easier administratively.

6 COMMISSIONER BLAIR: Well, our standard
7 procedure has been to allow the witnesses to testify,
8 and should there be any proprietary information being
9 brought up then we would go to an in camera hearing
10 after the conclusion of all the witness testimony.

11 However, if the parties have no objection to
12 the procedure that was recommended by the Chair or,
13 I'm sorry, if you have any objection to the procedures
14 recommended by counsel, please let me know.

15 MR. MECONE: The Postal Service has no
16 objection.

17 COMMISSIONER BLAIR: So what we will do, as
18 opposed to completing the public testimony first and
19 then going into an in camera, we'll proceed with the
20 witness' public information first, and should there be
21 any need for an in camera session we'll proceed to
22 that. Is that acceptable to the parties here today?

23 MR. LEVY: It is for GameFly.

24 MR. MECONE: It's acceptable to the Postal
25 Service.

1 COMMISSIONER BLAIR: Okay. Well, then thank
2 you very much.

3 We will proceed now to providing the
4 testimony. Mr. Mecone, will you please call your
5 first witness?

6 MR. MECONE: The Postal Service calls
7 Witness Tory R. Seanor to the stand.

8 COMMISSIONER BLAIR: Good morning, Mr.
9 Seanor.

10 MR. SEANOR: Good morning.

11 COMMISSIONER BLAIR: Will you please stand
12 to take the oath?

13 Whereupon,

14 TROY R. SEANOR

15 having been duly sworn, was called as a
16 witness and was examined and testified as follows:

17 COMMISSIONER BLAIR: Mr. Mecone, you may
18 proceed.

19 MR. MECONE: Thank you.

20 (The document referred to was
21 marked for identification as
22 Exhibit No. USPS-T-3.)

23 DIRECT EXAMINATION

24 BY MR. MECONE:

25 Q Mr. Seanor, before you are two copies of a

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1 document designated as USPS-T-3, Direct Testimony of
2 Troy R. Seanor on behalf of the United States Postal
3 Service. Was this document prepared by you or under
4 your supervision?

5 A Yes.

6 Q Do you have any corrections to this
7 document?

8 A I have one correction. On page 5, line 10,
9 of my testimony it was pointed out in one of the
10 GameFly interrogatories that I need to remove the word
11 "good". That's the only one.

12 Q Is that correction reflected on the copies
13 in front of you?

14 A Yes. They were marked out in red.

15 Q If you were to provide the content of that
16 document as your testimony today, would it be the
17 same?

18 A Yes.

19 MR. MECONE: Presiding Officer Blair, the
20 Postal Service moves into evidence USPS-T-3, Direct
21 Testimony of Troy R. Seanor on behalf of the United
22 States Postal Service.

23 COMMISSIONER BLAIR: Are there any
24 objections?

25 MR. LEVY: GameFly has no objection.

1 COMMISSIONER BLAIR: Hearing none, the
2 direct testimony will be received into evidence and it
3 will be transcribed.

4 (The document referred to,
5 previously identified as
6 Exhibit No. USPS-T-3, was
7 received in evidence.)

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BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Complaint of Gamefly, Inc.

Docket No. C2009-1

DESIGNATION OF WRITTEN CROSS-EXAMINATION
OF UNITED STATES POSTAL SERVICE
WITNESS TROY R. SEANOR
(USPS-T-3)


Party

GameFly, Inc.

Interrogatories

GFL/USPS-T3-1-25, 26a, 27-31

Respectfully submitted,


Shoshana M. Grove
Secretary

INTERROGATORY RESPONSES OF
UNITED STATES POSTAL SERVICE
WITNESS TROY R. SEANOR (T-3)
DESIGNATED AS WRITTEN CROSS-EXAMINATION

<u>Interrogatory</u>	<u>Designating Parties</u>
GFL/USPS-T3-1	GFL
GFL/USPS-T3-2	GFL
GFL/USPS-T3-3	GFL
GFL/USPS-T3-4	GFL
GFL/USPS-T3-5	GFL
GFL/USPS-T3-6	GFL
GFL/USPS-T3-7	GFL
GFL/USPS-T3-8	GFL
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GFL/USPS-T3-24	GFL
GFL/USPS-T3-25	GFL
GFL/USPS-T3-26a	GFL
GFL/USPS-T3-27	GFL
GFL/USPS-T3-28	GFL
GFL/USPS-T3-29	GFL
GFL/USPS-T3-30	GFL
GFL/USPS-T3-31	GFL

RESPONSE OF UNITED STATES POSTAL SERVICE WITNESS TROY R.
SEANOR TO DISCOVERY REQUESTS OF GAMEFLY, INC.

GFL/USPS-T3-1. Please produce copies of all documents that you received in connection with your work in this case.

RESPONSE:

Please see the public versions of Volume V of the transcript of the oral cross-examination of David Hodess (July 28, 2010), the Joint Statement of Undisputed and Disputed Facts (July 20, 2009), Direct Testimony of Nicholas F. Barranca on behalf of the United States Postal Service (July 7, 2010), Direct Testimony of Larry J. Belair on behalf of the United States Postal Service (July 7, 2010), and Direct Testimony of Rob Lundahl on behalf of the United States Postal Service (July 8, 2010). These documents are all available on the Postal Regulatory Commission website. Please also see the Memorandum of GameFly, Inc., Summarizing Documentary Evidence (April 12, 2010). This document is filed under seal with the Postal Regulatory Commission.

RESPONSE OF UNITED STATES POSTAL SERVICE WITNESS TROY R.
SEANOR TO DISCOVERY REQUESTS OF GAMEFLY, INC.

GFL/USPS-T3-2. Please produce copies of all documents that you reviewed in connection with your work in this case.

RESPONSE:

Please see the response to GFL/USPS-T3-1.

RESPONSE OF UNITED STATES POSTAL SERVICE WITNESS TROY R.
SEANOR TO DISCOVERY REQUESTS OF GAMEFLY, INC.

GFL/USPS-T3-3. Have you ever had a discussion with any employee of GameFly? If so, please identify the employee(s) and state the date, location and substance of the discussion.

RESPONSE:

No.

RESPONSE OF UNITED STATES POSTAL SERVICE WITNESS TROY R.
SEANOR TO DISCOVERY REQUESTS OF GAMEFLY, INC.

GFL/USPS-T3-4. During your career at the Postal Service, have you, your Area, your District, your plant, or your subordinates issued any Standard Operating Procedures ("SOPs") governing the processing of DVD mailers? If so, please identify and produce each such SOP.

RESPONSE:

No.

RESPONSE OF UNITED STATES POSTAL SERVICE WITNESS TROY R.
SEANOR TO DISCOVERY REQUESTS OF GAMEFLY, INC.

GFL/USPS-T3-5. Please produce each SOP now in effect in the Eastern Area or the Cincinnati or Central Pennsylvania Districts that concerns the processing of Netflix DVD mailers.

RESPONSE:

I am aware of no SOPs now in effect in those areas.

RESPONSE OF UNITED STATES POSTAL SERVICE WITNESS TROY R.
SEANOR TO DISCOVERY REQUESTS OF GAMEFLY, INC.

GFL/USPS-T3-6. On page 1, lines 5-6, of USPS-T-3, you state "I am given to understand . . ." From whom did you obtain this understanding?

RESPONSE:

I obtained this understanding through discussions with Postal Service counsel.

RESPONSE OF UNITED STATES POSTAL SERVICE WITNESS TROY R.
SEANOR TO DISCOVERY REQUESTS OF GAMEFLY, INC.

GFL/USPS-T3-7. This question concerns the following statement on page 3, lines 3-6, of USPS-T-3:

Decisions regarding the culling of DVD mail depend upon factors such as volume, density, how easily the mailpiece can be identified and captured (aided by visibility and easy access), and consideration of benefits vs. costs (with time being a critical element of the latter).

(a) Please produce documents indicating that these factors are actually considered in making local, district or area decisions about culling.

(b) Please identify the metric used for each of the listed factors, explain how each of the listed factors is measured and weighted in the course of making culling decisions, and produce documents showing how the measurement and weighting work in practice.

RESPONSE:

(a) I am not aware of any documents responsive to this discovery request.

Local decisions regarding processing are made based on managers' knowledge and understanding of each local operating environment. These environments are influenced by factors such as machine and automated equipment availabilities and capabilities, staffing mailflows (including the mix of classifications and volumes), transportation availability and schedules, as well as weather and other conditions affecting processing and delivery, which can change on a daily basis, or more frequently.

(b) I am not aware of any specific metric that is used to evaluate these factors outside of the local context. I am not aware of any documents responsive to this discovery request.

RESPONSE OF UNITED STATES POSTAL SERVICE WITNESS TROY R.
SEANOR TO DISCOVERY REQUESTS OF GAMEFLY, INC.

GFL/USPS-T3-8. On page 3, line 8, of USPS-T-3, you state "as I understand . . ." From whom did you obtain this understanding?

RESPONSE:

I obtained this understanding through discussions with Postal Service counsel and Postal Service Headquarters Operations personnel.

RESPONSE OF UNITED STATES POSTAL SERVICE WITNESS TROY R.
SEANOR TO DISCOVERY REQUESTS OF GAMEFLY, INC.

GFL/USPS-T3-9. On page 3, line 17, of USPS-T-3, you state "I understand that many of the data sources we use to drive our decisions also end up being used in Commission proceedings."

(a) From whom did you obtain this understanding?

(b) Please identify each of the data sources used by the Postal Service "derive [its] decisions about local culling decisions." [sic]

(c) Please produce documentation showing how the data are actually compiled, weighted and considered in recent culling decisions.

RESPONSE:

(a) I obtained this understanding through discussions with Postal Service counsel and Postal Service Headquarters Operations personnel.

(b) A variety of data sources are employed in making local decisions. These include such operating and statistical data systems as MODS, TACS, ODIS, MPE Watch and machine utilization reports.

(c) I am not aware of any documents responsive to this discovery request.

RESPONSE OF UNITED STATES POSTAL SERVICE WITNESS TROY R.
SEANOR TO DISCOVERY REQUESTS OF GAMEFLY, INC.

GFL/USPS-T3-10. On page 4, lines 20-22, of USPS-T-3, you state:

As such, strategic diversion of mailpieces out of the tighter AFCS window leads to overall benefits in meeting outgoing operational clearance times, while facilitating early DPS dispatch in the morning with its benefits for carriers."

Please produce all analyses, studies and other calculations quantifying the benefit of this "strategic diversion."

RESPONSE:

Local operating decisions are based on specific evaluation of a variety of factors that characterize each local operating environment. Local managers assess the operating requirements based on their knowledge and understanding of those environments, and in accord with a variety of data derived from operating and statistical data systems, as well as the logic of specific operating situations, and the managers' experience in managing operations at that level. I am not aware of any formal studies quantifying this benefit that would apply outside each local context.

RESPONSE OF UNITED STATES POSTAL SERVICE WITNESS TROY R.
SEANOR TO DISCOVERY REQUESTS OF GAMEFLY, INC.

GFL/USPS-T3-11. On page 5, line 10, of USPS-T-3, is a word or phrase missing from the phrase "good clear"?

RESPONSE:

The word "good" should be omitted from the sentence.

RESPONSE OF UNITED STATES POSTAL SERVICE WITNESS TROY R.
SEANOR TO DISCOVERY REQUESTS OF GAMEFLY, INC.

GFL/USPS-T3-12. On page 6, line 1, of USPS-T-3, you state "I understand that . . ." From whom did you obtain this understanding?

RESPONSE:

I obtained this understanding through discussions with Postal Service counsel and Postal Service Headquarters Operations personnel.

RESPONSE OF UNITED STATES POSTAL SERVICE WITNESS TROY R.
SEANOR TO DISCOVERY REQUESTS OF GAMEFLY, INC.

GFL/USPS-T3-13. On page 6, line 2, of USPS-T-3, you state "I also understand that . . ." From whom did you obtain this understanding?

RESPONSE:

I obtained this understanding through discussions with Postal Service Headquarters Operations personnel.

RESPONSE OF UNITED STATES POSTAL SERVICE WITNESS TROY R.
SEANOR TO DISCOVERY REQUESTS OF GAMEFLY, INC.

GFL/USPS-T3-14. On page 6, line 12, of USPS-T-3, you state "I understand that . . ." From whom did you obtain this understanding?

RESPONSE:

I obtained this understanding through discussions with Postal Service Counsel and Postal Service Headquarters Operations personnel.

RESPONSE OF UNITED STATES POSTAL SERVICE WITNESS TROY R.
SEANOR TO DISCOVERY REQUESTS OF GAMEFLY, INC.

GFL/USPS-T3-15. On page 7, lines 4-5, of USPS-T-3, you state:

[B]ut I do understand from Headquarters operations that on average, Netflix pieces average less than 70 miles through the mail", so most pieces are not going through more than one plant. GameFly return pieces present a different profile, averaging over 459 miles per piece through the mail from origin to the destination GameFly processing site.

(a) From whom at Headquarters Operations did you obtain this information?

(b) Please produce all written communications on which your understanding is based.

(c) Please produce the data and calculations from which 70 and 459 mile values were derived.

(d) How many piece handlings do the average pieces of Netflix and GameFly return mail receive on their return trips?

(e) Please produce data and calculations sufficient to verify your response to part (d).

RESPONSE:

(a) I obtained this information from Operations Requirements personnel.

(b) No written communications exist.

(c-e) Origin 3-digit ZIP (OZIP) to Origin PDC (OPDC): the distance from each OZIP to its OPDC (mapping via L201-Label List) was calculated by PC Miler using the 3-digit ZIP Code centroid and plant latitude and longitude. Using 201 Labeling List accounts for the instances where collection mail may not be processed at the closest processing plant.

OPDC to Destination (e.g. location of caller service address for pick-up of mail pieces): the distance from all plants to all mailer destination pick-up points was calculated by PC Miler using the destination 5-digit ZIP Code centroid and plant

RESPONSE OF UNITED STATES POSTAL SERVICE WITNESS TROY R.
SEANOR TO DISCOVERY REQUESTS OF GAMEFLY, INC.

latitude and longitude. The latitude and longitude for each mailer destination pick-up point was derived from 5-digit of the destination facility address. The facility found to be closest to each plant was used for the OZIP to destination distance.

OZIP to Destination: the distance is the weighted average of the sum of the individual OZIP to OPDC and OPDC to destination distances. The number of residential addresses in each 3-digit ZIP Code was used to weight, presuming that 3-digit ZIP Codes with higher numbers of residential addresses would be more likely to produce return disc mail pieces than 3-digit ZIP Codes with high proportions of business deliveries.

Only CONUS 3-digit ZIP Codes with representative geography were used (i.e. no offshore and no IRS ZIP Codes).

This would be difficult to calculate without knowing the density level of pieces originating in each 3-digit ZIP Code. That density, particularly for GameFly, would determine how many subsequent handlings would be required. For example, a piece returned from Maine might have an intermediate sort en route to Pittsburgh, or not, if there is enough mail generated at the Maine plant for the Pittsburgh service area.

Please see Appendix-GFL/USPS-T3-15.

RESPONSE OF UNITED STATES POSTAL SERVICE WITNESS TROY R.
SEANOR TO DISCOVERY REQUESTS OF GAMEFLY, INC.

GFL/USPS-T3-16. On page 7, lines 9-11, of USPS-T-3, you state:

Where culling of Netflix by a delivery unit or local facility is done, operations has concluded that this efficient handling makes good business sense, as it can save additional downstream processing costs.

(a) Please identify all the metrics or criteria that define good business sense.

(b) Please state the priority ordering of or weighting given to these metrics.

(c) Please produce all studies, analyses, data or other information that you contend support the proposition that culling "can save additional downstream processing costs."

(d) Please provide all studies or analyses showing that culling by a delivery unit or local facility is good business sense.

(e) Aside from studies, please provide the basis for your conclusion that culling by a delivery unit or local facility makes good business sense.

RESPONSE:

(a) Removing pieces from downstream processing reduces the number of pieces which need to be processed. Fewer pieces can reduce the amount of time needed to clear the collection operations, which helps ensure clearing the outgoing operation on time. Using less time to accomplish a task is good business sense.

(b) Priority or weighting of factors will vary from place to place based on the unique circumstances of each facility.

(c) I am not aware of any formal studies documenting this.

(d) I am not aware of any formal studies documenting this.

RESPONSE OF UNITED STATES POSTAL SERVICE WITNESS TROY R.
SEANOR TO DISCOVERY REQUESTS OF GAMEFLY, INC.

(e) My years of experience in mail processing operations, as well as the logic of processing steps, as described above, lead me to conclude that utilizing options which can streamline downstream processing reflects good business sense.

RESPONSE OF UNITED STATES POSTAL SERVICE WITNESS TROY R.
SEANOR TO DISCOVERY REQUESTS OF GAMEFLY, INC.

GFL/USPS-T3-17. On page 7, lines 11-14, of USPS-T-3, you state:

In some locations, separation of Netflix mail can begin in the delivery unit. If the carriers drop the collection pieces into a unique tub or tray, this eliminates the need for any subsequent AFCS or other automated letter sortation.

(a) Of the Netflix mail that is culled before the AFCS, what percentage is culled in the delivery unit?

(b) What percentage is culled in the 010 operation but before the AFCS?

(c) Describe the flow of mail and the process by which carriers drop collection mail into a unique tray or tub.

(d) Please produce studies, analyses or other internal documents sufficient to verify your responses to parts (a) through (c).

(e) Please provide all cost studies and analysis that show that separating the mail as you describe actually saves money.

RESPONSE:

(a) I am not aware of any studies measuring this activity.

(b) I am not aware of any studies measuring this activity.

(c) Carriers may cull pieces as they retrieve outgoing mail from customer mailboxes and place them in a separate container in their vehicle. The same can happen as they empty collection boxes along their route. Upon return to the delivery unit, the containers would be consolidated before being transported to the processing facility.

(d) I am not aware of any studies measuring this activity.

(e) Local operating decisions have real and immediate consequences for each local management team, which must manage against rigorous budgetary constraints within the framework of overall financial controls and processes within

RESPONSE OF UNITED STATES POSTAL SERVICE WITNESS TROY R.
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the Postal Service. I am not aware of any general studies measuring this activity that would apply outside of the local context.

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GFL/USPS-T3-18. On page 7, lines 15-16, of USPS-T-3, you state: "Operations would not be doing this if it added any overall time (cost) in field operations."

(a) Do you believe that operations minimizes costs at all times in all field operations?

(b) Is cost minimization ever less important than another objective? If so, in what circumstances?

(c) Does operations depend on analysis to determine how to minimize costs?

RESPONSE:

(a) There are times when operations managers make choices to prioritize other elements than minimizing costs, based on their best judgment.

(b) An obvious example when cost minimizing may be less important than another objective is service. For example, operations may determine that it offers better customer service by ensuring that in-home dates on mailings are met.

(c) Yes, but not usually in a formal documented study. Various systems provide data which is analyzed and then used to make a decision.

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GFL/USPS-T3-19. This question refers to page 7, lines 9-19, of USPS-T-3, where you state:

Where culling of Netflix by a delivery unit or local facility is done, operations has concluded that this efficient handling makes good business sense, as it can save additional downstream processing costs. In some locations, separation of Netflix mail can begin in the delivery unit. If the carriers drop the collection pieces into a unique tub or tray, this eliminates the need for any subsequent AFCS or other automated letter sortation. This helps overall clearance of all originating mail in the narrow processing window. Operations would not be doing this if it added any overall time (cost) in field operations. A large plant can handle somewhere between seven and twelve thousand Netflix DVDs nightly. If a good portion of this volume can be trayed the first time it is handled, the savings will compound by reducing overall handling costs and enabling the facility to achieve overall clearance time targets.

Please produce all analyses, studies, and other calculations quantifying the cost savings from culling Netflix mail.

RESPONSE:

Please see the responses to GFL/USPS-T3-16-18. I am not aware of any study measuring the cost savings that would apply generally outside of the local context.

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GFL/USPS-T3-20. On page 10, line 13, of USPS-T-3, you state: "My understanding is that . . ." From whom did you derive this understanding?

RESPONSE:

I derived this understanding through discussions with Postal Service
Headquarters Operations personnel.

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GFL/USPS-T3-21. On page 11, line 10-17, of USPS-T-3, you state that density plays a major role in local decisions to give Netflix return pieces manual culling or not.

(a) What is the lowest density that makes culling efficient?

(b) If you answer to part (a) is some variant of "it depends on other factors," please identify the factors and explain what minimum density thresholds for manual culling result from those factors.

(c) Please produce all studies, reports or analyses and other documents that support your position about the importance of density in manual culling decisions.

RESPONSE:

(a) Please see the responses to GFL/USPS-T3-16-20. It would be difficult to specify a particular percentage, since ten percent of one hundred pieces has different operational impacts than ten percent of ten thousand pieces.

(b) Equally important to density is visibility.

(c) I am not aware of any studies addressing this issue that would apply generally outside the local context.

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GFL/USPS-T3-22. On page 17, line 15, you state: "I my understand that . . ."

- (a) The phrase appears garbled. If it is, please correct it.
- (b) From whom did you derive the referenced understanding?

RESPONSE:

- (a) The phrase should read "I understand that..."
- (b) I do not recall whether someone told me this or I read it.

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GFL/USPS-T3-23. On page 18, lines 1-2, you state: "Generally all outgoing or originating operations in a processing facility must be complete and dispatched by 2230." Please provide all analyses, studies, or other calculations concerning the effect of culling Netflix mail on meeting the 2230 dispatch time.

RESPONSE:

Please see the responses to GFL/USPS-T3-16-21. I am not aware of any studies measuring this effect that would apply generally outside the local context.

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GFL/USPS-T3-24. On page 18, lines 5-9, you state:

Facilities where high density mailings can be efficiently isolated, thereby avoiding additional handling, can cut significant time off of their clearance. Even by shifting seven to ten thousand pieces of Netflix directly to dispatch can save 10-15 minutes or more from the AFCS operations and, more broadly, overall originating clearance time.

Please provide all analyses, studies, reports and similar documents that support these claims.

RESPONSE:

Machine utilization reports (national view) identify AFCS throughput per hour in Quarter 3 at 30,600 average pieces per hour. Removing seven to ten thousand pieces would reduce run time between fifteen and nineteen minutes. Quarter 3 average throughput for DBCS machines was 36,200 pieces per hour. Removing seven to ten thousand pieces to be processed would reduce run time between twelve and sixteen minutes. Please see Appendix-GFL/USPS-T3-24.

APPENDIX-GFL/USPS-T3-24

Printed On 8/18/2010 1:31:19PM CT

Machine Utilization Report

Page 1 of 9

PRODUCTION: MIRS v 3.0.25.P3

FY: 2010 MODS Date: 04/01/2010 - 06/30/2010

NATIONAL

Machine Type	Machines Available	Machines Utilized	Run Time	Run Time Thruput	Wall Clock Time	Wall Clock Thruput	Fed
AFCs	985	984**	166,303.14	30,929	394,599.79	13,035	5,143,653,037
Others	985	984	166,303.14	30,929	394,599.79	13,035	5,143,653,037
	985	984**	166303.14	30,929	394,599.79	13,035	5,143,653,037

* The machine was only online for a portion of the date range selected (the number of machines decreased).

** The machine was only utilized for a portion of the date range selected or machines without data are not displayed.

*** Areas/Districts/Plants that do not contain machine data are not displayed.

NATIONAL DATE RANGE: 04/01/2010 - 06/30/2010, Machine Type: AFCs

Printed On 8/18/2010 1:40:08PM CT

Machine Utilization Report

Page 1 of 9

PRODUCTION: MIRS v 3.0.25.P3

FY: 2010 MODS Date: 04/01/2010 - 06/30/2010

NATIONAL

Machine Type	Machines Available	Machines Utilized	Run Time	Run Time Thruput	Wall Clock Time	Wall Clock Thruput	Fed
DBCS	4,837	4,837**	1,820,500.62	36,198	2,759,697.22	23,879	65,898,620,001
DBCS Machines	4,837	4,837	1,820,500.62	36,198	2,759,697.22	23,879	65,898,620,001
	4,837	4,837**	1820500.62	36,198	2,759,697.22	23,879	65,898,620,001

* The machine was only online for a portion of the date range selected (the number of machines decreased).

** The machine was only utilized for a portion of the date range selected or machines without data are not displayed.

*** Areas/Districts/Plants that do not contain machine data are not displayed.

NATIONAL DATE RANGE: 04/01/2010 - 06/30/2010, Machine Type: , DBCS

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GFL/USPS-T3-25. On page 18, lines 21-23, of USPS-T-3, you contend that "a network of caller service pickup points comparable to what Netflix uses would also be necessary [for the Postal Service] to attain the economies [with GameFly] that the Postal Service realizes with Netflix." Please provide any studies or analyses that support this statement.

RESPONSE:

I am not aware of any studies addressing this issue.

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GFL/USPS-T3-26. (a) At how many caller service pickup locations does Netflix receive mail?

RESPONSE:

(a) Currently there are one hundred thirty-two pick up points for Netflix.

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GFL/USPS-T3-27. (a) Would the culling of Netflix mail into trays be justified on the grounds of efficiency if Netflix had only 12 caller service pickup points at which it received mail?

(b) Would the culling of Netflix mail into trays be justified on the grounds of efficiency if Netflix had 20 caller service pickup points at which it received mail?

RESPONSE:

(a-b) Please see the response to GFL/USPS-T3-24, defining the positive impact on the outgoing operations from culling Netflix pieces. That benefit could still be attained regardless of the number of pickup points. However, if the number of pickup points was reduced, the Postal Service would begin to assume transportation costs which are currently avoided by the number of pickup points being used.

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GFL/USPS-T3-28. On page 19, lines 9-12, of USPS-T-3, you state that:

So attempting to cull all DVD pieces would likely prove inefficient because it would consume considerable time (especially in the AFCS operation) in the finite processing window to extract those pieces that were missed by the delivery unit. At some point, this would interfere with the efficiency of the operation and add rather than subtract and add rather than subtract processing costs.

(a) Please produce all studies, reports and analyses that support these statements.

(b) What is the volume density at which the cross-over point described in the second quoted sentence occurs? Please produce all studies, reports and analyses on which you rely.

RESPONSE:

(a) Please see the responses to GFL/USPS-T3-16-21. My testimony is based on my experience and knowledge of operating conditions generally, as well as the logic of processing operations involving disc mail. I am not aware of any formal studies supporting these statements that would apply to every set of local conditions.

(b) Volume density would not be the only factor which would determine where there would be a negative impact on efficiency. Visibility is a factor which would also have an impact on the efficiency of trying to cull all DVDs which have not been segregated by delivery unit collection operations.

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GFL/USPS-T-3-29. On page 21, line 21, you state: "Yes, as I understand the conditions specified in the letter."

- (a) Please explain why you added the qualifying words after "Yes."
- (b) Please identify each of the conditions specified in the letter from Andrew German to David Levy dated May 17, 2010, regarding the processing of GameFly DVD mail whose meaning was not clear to you from the text of the letter itself.
- (c) What aspects of the letter did you ask to have clarified?
- (d) What clarifications did you receive that are reflected in your current understanding of the letter?
- (e) From whom did you receive the clarifications?

RESPONSE:

- (a) My statement merely reflects the fact that I did not author the letter. I have no reason to believe that the letter communicates any message other than its plain meaning.
- (b) None.
- (c) None.
- (d) None.
- (e) Not Applicable.

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GFL/USPS-T-3-30. On page 21, lines 25-26, you state: "Yes, as I understand the conditions and how those relate to efficient mail flow."

(a) Please explain why you considered it necessary to add the qualifying words after "Yes."

(b) Please explain your understanding of the conditions established in the reference [sic] letter, with particular emphasis on the conditions whose meaning the text of the letter leave ambiguous.

(c) Please identify each of the conditions established in the referenced letter whose meaning was not clear to you from the text of the letter itself.

(d) What aspects of that part of the letter did you ask to have clarified?

(e) What clarifications did you receive that are reflected in your current understanding of that part of the letter?

(f) From whom did you receive the clarifications?

RESPONSE:

(a) Please see the response to GFL/USPS-T3-29(a).

(b) I understand the conditions contained in the letter to be those listed below.

- GameFly's use of a mail piece with a unique color
- GameFly's use a mail piece qualifying for the one-ounce First-Class Mail Letter rate
- GameFly's receipt of delivery via caller service at approximately one hundred thirty locations
- GameFly's entry of outbound mail and pickup of inbound pieces in a way that total one-way distance in the mail drops to approximately the same distance as attained by other DVD mail pieces

I do not believe there is any condition whose meaning is ambiguous.

However, it is my understanding that the letter invites GameFly to discuss with the Postal Service any ambiguities related to the conditions in the letter or GameFly's disagreement with a particular condition.

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- (c) None.
- (d) None.
- (e) None.
- (f) Not Applicable.

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GFL/USPS-T3-31. The words "jam," "jams" or "jammed" appear six time [sic] in your testimony (USPS-T-3).

(a) At what rate do Netflix's inbound mailpieces jam Postal Service mail processing equipment?

(b) Please produce all data, studies and analyses on the propensity of Netflix's inbound mailpieces to jam Postal Service mail processing equipment.

RESPONSE:

(a-b) I am not aware of any studies measuring jam rates for Netflix mail.

1 COMMISSIONER BLAIR: Mr. Seanor, have you
2 had an opportunity to examine the packet of written
3 cross-examination that was made available to you in
4 the hearing room this morning?

5 THE WITNESS: Yes.

6 COMMISSIONER BLAIR: If the questions
7 contained in that packet were posed to you orally,
8 would your answers be the same as those you previously
9 provided in writing?

10 THE WITNESS: Yes.

11 COMMISSIONER BLAIR: Do you have any
12 additions or corrections to that written cross-
13 examination, to those responses?

14 THE WITNESS: No.

15 COMMISSIONER BLAIR: Is there a motion that
16 those go into the record today as well?

17 MR. LEVY: I think GameFly would be the
18 moving party, and we so move.

19 COMMISSIONER BLAIR: Is there any objection?

20 MR. MECONE: No objection.

21 COMMISSIONER BLAIR: Hearing none, the
22 written cross-examination of Witness Seanor is
23 admitted into evidence, and the reporter is to include
24 this material at this point in today's transcript.

25 Counsel, will you please provide two written

1 copies of the cross-examination of Troy Seanor to the
2 reporter?

3 MR. MECONE: Let the record reflect that Mr.
4 Hollies has just done that.

5 COMMISSIONER BLAIR: Thank you. Is there
6 any additional written cross-examination for Witness
7 Seanor?

8 (No response.)

9 COMMISSIONER BLAIR: Hearing none, the
10 written cross-examination of Witness Seanor is
11 admitted into evidence, and the reporter is to include
12 this material at this point in today's transcript.

13 (The document referred to was
14 marked for identification as
15 Exhibit No. USPS-T-3 and was
16 received in evidence.)

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1 COMMISSIONER BLAIR: We received one request
2 for oral cross-examination of Witness Seanor from
3 GameFly. Does any other participant wish to cross-
4 examine Witness Seanor?

5 (No response.)

6 COMMISSIONER BLAIR: Hearing none, we'll
7 begin the cross-examination in open session.

8 However, I also notice at counsel table
9 another participant. Would you please identify
10 yourself for the record?

11 MR. MAY: Timothy May. I'm counsel for
12 Netflix. Not a party to the proceeding, but we're
13 observing. Thank you.

14 COMMISSIONER BLAIR: Thank you very much,
15 Mr. May.

16 Now we can begin the cross-examination in
17 open session. Mr. Levy, will you please begin?

18 MR. LEVY: Thank you, Commissioner Blair.

19 CROSS-EXAMINATION

20 BY MR. LEVY:

21 Q Good morning, Mr. Seanor.

22 A Good morning.

23 Q You probably know, but I'm David Levy for
24 GameFly. Would you go to page 10 of your testimony?

25 A Yes.

1 Q And I would refer to you to line 25 where
2 you say, "I am aware that some plants do not attempt
3 to cull the DVDs from the AFCS buffer ledge." Now,
4 AFCS in that is Automatic Facer Canceler System?

5 A Advanced Facer Canceler System.

6 Q Now, most Netflix return mail is culled,
7 isn't it?

8 A Yes.

9 Q And most Netflix mail that is culled is then
10 put in containers?

11 A Yes.

12 Q And in fact the treatment received by
13 Netflix mail includes a number of other manual steps
14 besides culling and putting it in containers, doesn't
15 it?

16 A What do you mean by a number?

17 MR. LEVY: I'm going to ask to have marked
18 as GameFly Cross-Examination Exhibit 5 I believe the
19 number is we're up to a document with the Bates
20 numbers GFL-535 through 542 entitled Processing
21 Netflix Mailings, U.S. Postal Service Eastern
22 District.

23 (The document referred to was
24 marked for identification as
25 No. GFL-CX-5.)

1 MR. MECONE: The Postal Service would just
2 like to note for the record that we were not provided
3 this in advance as the rules so note.

4 COMMISSIONER BLAIR: Thank you.

5 MR. MECONE: And the Postal Service would
6 also like to renew its objection to the entrance of
7 this document into evidence. There has been no
8 authentication of the document.

9 COMMISSIONER BLAIR: Mr. Levy?

10 MR. LEVY: There has been no motion at this
11 point to introduce it into evidence. I'm about to ask
12 the witness some questions about it.

13 BY MR. LEVY:

14 Q Mr. Seanor, do you recognize this document?

15 A No.

16 Q You have never seen it before?

17 A This document I saw for the first time
18 yesterday, but I don't recognize it as an Eastern Area
19 SOP being from the Eastern Area.

20 Q Did you ask your colleagues at the Postal
21 Service where the document came from?

22 A Yes, I did. I inquired with a few people
23 last night and nobody could produce this. The only
24 thing that one of my plant managers could find when
25 they did a search was a copy of the Pacific Area SOP.

1 Q How did you come to get possession of this
2 document yesterday?

3 A I had it in a copy of my documents from my
4 attorney.

5 Q So somebody at the Postal Service gave it to
6 your attorney, right?

7 A I would assume.

8 Q It didn't come directly off the press from
9 something that GameFly made up?

10 A I have no idea on that.

11 Q But the custody of the document came to you
12 from the Postal Service?

13 A Yes.

14 Q Sir, what office are you based in right now?

15 A Right now I'm working out of the Eastern
16 Area Office in Pittsburgh, Pennsylvania.

17 Q And how long have you been there?

18 A I've been there for six and a half months.

19 Q And before that you were in what office?

20 A I was the senior plant manager for the
21 Cincinnati District.

22 Q Is that in the Eastern Area?

23 A Yes.

24 Q And how long were you there?

25 A A year and a half.

1 Q And before that where were you?

2 A I was the senior plant manager for the
3 Central Pennsylvania District.

4 Q And that's also in the Eastern Area?

5 A Yes.

6 Q And what was your posting before that?

7 A Manager and plant support for the Columbus,
8 Ohio, District.

9 Q Is that in the Eastern Area?

10 A Yes.

11 Q Okay. That was Exhibit 5. Why did you look
12 at the document?

13 A Because it was mentioned in Larry's
14 testimony that there was a specific SOP, an Eastern
15 SOP, and I had never seen an Eastern SOP.

16 Q By Larry, you mean Larry Belair?

17 A Yes, sir.

18 Q Who was another Postal Service witness in --

19 A Yes.

20 Q -- this round of the case?

21 A Yes.

22 Q Did you ask Mr. Belair where the document
23 came from?

24 A No.

25 MR. LEVY: I'm going to have marked as

1 GameFly Cross-Examination Exhibit No. 6 what I will
2 identify as the Postal Service's Institutional Answer
3 to GameFly Interrogatory GFL/USPS 106.

4 (The document referred to was
5 marked for identification as
6 No. GFL-CX-6.)

7 COMMISSIONER BLAIR: Thank you.

8 BY MR. LEVY:

9 Q Mr. Seanor, have you seen this document
10 before?

11 A Yes.

12 Q I direct your attention to the answer to
13 Part AB.

14 A Yes.

15 Q Can you read the first sentence of that?

16 A "The reference to the Eastern Area SOP being
17 rescinded was an error."

18 Q Now will you look at the first sentence of
19 the question where it says, "Please refer to...", and
20 then it identifies two documents?

21 A Yes.

22 Q Do you see the reference to Eastern Area SOP
23 No. 05-05-4?

24 A Yes.

25 Q And what are the last few digits of the

1 Bates number?

2 A 53542.

3 Q And that corresponds with the document that
4 you said you hadn't seen before yesterday and you have
5 no idea where it came from?

6 A It says 535 on the bottom of the document
7 that you just handed me a few minutes ago. Is that
8 what you're looking for?

9 Q Yes, sir. And the last page of the document
10 is 542, correct?

11 A Yes, it does says 542.

12 Q So this interrogatory answer appears to be
13 referring to the document that you've never seen
14 before yesterday?

15 A Yes.

16 Q Did you ask anyone at the Postal Service why
17 the Postal Service's institutional answer says that
18 reference to the Eastern Area SOP being rescinded was
19 an error?

20 A Yes. We discussed this, and the reason it
21 was an error as being rescinded is I seriously doubt
22 and I have no knowledge of it ever being issued.

23 Q Mr. Seanor, we got this document in
24 discovery from the Postal Service. Are you aware that
25 the Postal Service has ever told us or the Commission

1 that this document wasn't issued?

2 A I don't know that.

3 Q Maybe to shortcut time, are there any other
4 documents that you're aware of that have been produced
5 by the Postal Service in this case that weren't
6 issued?

7 A That would be hard for me to answer.

8 Q You're not aware of any?

9 A I'm not aware of any.

10 Q Now, your testimony is that when manual
11 handling of Netflix mailers occurs that is done
12 because doing it manually is more efficient than
13 running it through the automated letter processing
14 equipment?

15 A Yes.

16 Q And you take that position despite the
17 essence of any cost studies of the relative efficiency
18 of manual versus automated processing of Netflix
19 mailers?

20 A Yes, I do, and the reason is it's just
21 common sense. If you're on the dock of the plant and
22 you live this every night and you're dealing with this
23 volume, it's just common sense.

24 To a plant manager or a front line MBO it's
25 just obvious. We don't do studies for things that

1 just appear obvious. You know, is it more efficient
2 to pull three containers versus two containers? We
3 don't need a study to tell us that.

4 You know, I have had a chance to look at the
5 Christensen study two weeks ago, and one of the data
6 collectors in there --

7 Q I'm sorry. Did I ask you about the
8 Christensen study?

9 A No, but it's part of the answer.

10 Q The answer is responsive to my question
11 of --

12 A Yes, it is.

13 MR. MECONE: Counsel asked about the
14 efficiency, and this answer is going towards the
15 efficiency.

16 THE WITNESS: Yes. One of the data
17 collectors at the Lake, Florida, facility, they really
18 hit on what happens on the incoming docks every night
19 in most of the plants that I've been associated with.
20 You know, they really got to the crux of exactly the
21 minimal amount of handling that's required when we
22 have a proper first handling cull by the carriers and
23 the collection units out in the field.

24 It makes our job much easier when it hits
25 our collection dock, and we can do it extremely

1 cheaply once it hits our collection dock if it's done
2 properly in the field. So if we leverage that first
3 handling, the efficiency is a no-brainer. I mean, if
4 you're getting trays and tubs of Netflix mail and even
5 Blockbuster on a lesser extent on your collection
6 dock, why would you put them in the machinery? It
7 wouldn't make any sense.

8 To the collection side of it, those carriers
9 and those clerks are handling those pieces. It would
10 be the same as how do you handle recycles at your
11 house, recyclable material at your house? Do you put
12 it all in the trash bin and then separate it later?

13 You know, that first handling is where you
14 can really save the money, and that's what we're
15 leveraging.

16 BY MR. LEVY:

17 Q Well, in order to leverage you have to have
18 somebody stand and look at the incoming mail and
19 culling the pieces, correct?

20 A No, not if the separation is done properly
21 in the field before it comes to the collection dock,
22 and that's the majority of the volume.

23 Q I'm sorry. Can you repeat the first six
24 words of what you said? Not if the something is done
25 properly in the something.

1 A Not if it's done properly at the collection
2 unit, the post offices where the carriers are coming
3 back in. If it's done right there at that first
4 handling then when it comes in it's already in a
5 separate tub or tray. We don't have to spend a lot of
6 time with it then.

7 Q So at the first handling, though, the pieces
8 have to be culled?

9 A Well, they're not really culled at the first
10 handling. It's the first touch of the mail piece.

11 Q Some human being has to look at a stream of
12 mail and pull out the pieces that say Netflix on them.

13 A Yes, but they're handling those pieces as
14 they obtain them from the customers anyway.

15 Q And a staging area has to be set up for the
16 pieces to be put before they go into the containers,
17 don't they?

18 A Well, there is a dispatch staging area in
19 all the carrier units. You know, they do have like
20 separation for flats, Express Mail, different sorts
21 for Priority Mail, and they have tubs or trays there
22 for Netflix or Blockbuster or something like that.
23 Yes.

24 Q And those tubs have to be stored before
25 being used on some real estate?

1 A Are you referring to empty flat tubs?

2 Q Yes.

3 A Well, certainly.

4 Q And there has to be an inventory of tubs?

5 A I wouldn't say inventory because the mail
6 that the offices receive in the morning, they take the
7 mail out of those tubs as they're delivering their
8 routes and then they just use those tubs for the
9 collection end of it.

10 Q You're not testifying that the space needed
11 to perform the initial culling is free, are you? It
12 has a cost, doesn't it?

13 A It would be very small. Everything has a
14 cost. It would be very small.

15 Q Have you studied what the cost is?

16 A No.

17 Q Did Christensen study what the cost is?

18 A For storage of trays and tubs? I don't
19 think so.

20 Q Or the space where the culling occurs?

21 A I don't recall reading that in it.

22 Q Do you know whether anyone at the Postal
23 Service has done a study of that cost?

24 A I don't know that.

25 Q Do you know whether anyone has done a

1 systematic study of the cost of each of the steps
2 required for manually culling the pieces when they
3 first reach the Postal Service?

4 A Only what I read in the Christensen study.
5 I have not seen any other study.

6 Q Did you ask whether there were any other
7 studies?

8 A Yes.

9 Q And you were told there were none?

10 A There were none.

11 Q So the only study commissioned by the Postal
12 Service of the cost and benefits of manual culling is
13 the Christensen study?

14 A To my knowledge.

15 Q Will you go to page 18 of your testimony?

16 A Yes.

17 Q And I want to direct your attention to the
18 first nine lines. There you're talking about
19 processing windows; that is, time processing windows.

20 A Yes.

21 Q That certain activities need to be done
22 before a certain hour in order to meet some dispatch
23 time?

24 A Yes.

25 Q Now, is culling Netflix return mail

1 necessary to meet first class service standards?

2 A It helps.

3 Q Does it help much?

4 A Yes.

5 Q There have been no studies of whether
6 culling Netflix return mail is necessary to meet first
7 class service standards, correct?

8 A Not that I'm aware of.

9 Q And would you turn to your answer to GameFly
10 Interrogatory USPS-T-3-23? Just let me know when
11 you're there.

12 A Almost there. Got it.

13 Q Now, there you also said that you're not
14 aware of any such studies, right?

15 A Correct.

16 Q Now, before you finalized that answer, did
17 you inquire of your colleagues, ask your colleagues at
18 the Postal Service whether they were aware of any such
19 studies?

20 A Yes. I believe we discussed it with
21 counsel.

22 Q And you were informed that they were unaware
23 of any such studies either?

24 A They were not.

25 Q But it's your opinion, notwithstanding the

1 evidence of any studies, that culling of Netflix
2 return mail is very helpful to meeting first class
3 service standards?

4 A Yes, and I would say that again part of that
5 study from Christensen and the Lake Mary, Florida,
6 center supports my answer.

7 MR. LEVY: I'm going to ask to have marked
8 as GameFly Cross-Examination Exhibit 7 a two-page
9 document which is the Postal Service's answer to
10 GameFly/USPS Interrogatory 67.

11 (The document referred to was
12 marked for identification as
13 Exhibit No. GFL-CX-7.)

14 THE WITNESS: Did you want these back?

15 BY MR. LEVY:

16 Q Mr. Seanor, I direct your attention to the
17 first part of this question following subheading A.
18 It says:

19 "The Postal Service believes that the
20 primary reason that at least 70 percent of Netflix
21 inbound mail is processed manually is to get all mail
22 processed during the available window so as to meet
23 service standards." Do you see that part of the
24 question?

25 A Yes.

1 Q And then the answer to Part A begins with
2 the word, "No..." Do you see that?

3 A Yes.

4 Q And then continues with a definition of the
5 various kinds of manual processing.

6 A Yes.

7 Q Have you ever seen this document before?

8 A Yes.

9 Q Now would you turn to page 5 of your
10 testimony? There you discuss jams on the bottom half
11 of the page.

12 A I'm not following you.

13 MR. LEVY: All right. Page 5 of your
14 testimony, line 12. May I approach the witness?

15 COMMISSIONER BLAIR: Is there an objection?

16 MR. MECONE: No objection.

17 THE WITNESS: Line 14, page 5. Okay. Yes,
18 I've got it. All right. Thanks.

19 BY MR. LEVY:

20 Q The bottom half of page 5 has a discussion
21 of jams.

22 A Yes.

23 Q Now, what do you mean by jams in the context
24 of a DVD mailer?

25 A Well, I'm speaking about jams just in

1 general, but jams with DVDs is like somewhere in the
2 line of travel through the AFCS machine or the DBTS
3 machine where a piece would get stuck in a gate or
4 something like that or the diverter.

5 Q What happens when a piece gets stuck in a
6 gate or a diverter?

7 A Well, the first thing is the machine will
8 shut off, and then the jam has to be cleared.

9 Q And with a DVD mailer, how long does it take
10 to clear the machine?

11 A I would say that would depend really upon
12 the location of the jam in the machine and the
13 severity of the jam.

14 Q Can you give a range of times?

15 A It could be as short as 15 seconds to as
16 much as maybe five minutes.

17 Q Why did you put a discussion of jams in your
18 testimony?

19 A Because jams are probably the most
20 detrimental part of at-risk for what we call machine
21 performance that we face in the Postal Service. Jams
22 have a more significant impact on sortation,
23 throughput, operational clearance.

24 If you can avoid jams, and in the facilities
25 that have the best jam rates they tend to perform

1 better. They have better service performance. They
2 have better throughputs. They have better clearance
3 time.

4 Q So jams reduce the productivity of the
5 processing stream?

6 A Yes.

7 Q And jams increase the cost of the processing
8 stream?

9 A Yes.

10 Q Do Netflix return pieces ever jam, cause
11 jams?

12 A Yes.

13 Q Do they cause jams more than the average
14 letter-shaped mail piece?

15 A I would say in the AFCS, yes, they do.

16 Q Do jams increase the difficulty of meeting
17 the processing windows?

18 A Yes.

19 Q Is the tendency of Netflix return pieces to
20 jam a factor considered by Postal Service operational
21 managers in deciding whether to cull Netflix return
22 pieces from the automated letter stream?

23 A That may be why some of the facilities do it
24 at the AFCS ledge, but I would say no. Just jamming
25 in general. The focus is on avoiding jamming for all

1 mail types in all pieces of equipment.

2 Q Well, the Postal Service doesn't manually
3 cull all first class automation letter mail, does it?

4 A No.

5 Q But it culls most Netflix DVD mailers?

6 A Yes.

7 Q Now, one of the other important reasons for
8 manual culling is to reduce disk breakage. Is that
9 correct?

10 A Disk breakage for Netflix is not visible in
11 the plant environment. We don't see the cracks. We
12 just don't see that. The mail piece continues through
13 the mail stream wherever it's at, whether it's on the
14 inbound or outbound side.

15 We really don't see that; only if it's
16 involved with a jam where the piece is literally
17 somehow the packaging gets destroyed, and that's a
18 very, very small quantity.

19 Q Let me ask you to clarify that answer. When
20 you say we don't see that, do you mean that the Postal
21 Service operators don't experience breakage of DVDs or
22 that the breakage isn't visible to the eye when the
23 DVD is inside the mailer?

24 A That's a good clarification right there. We
25 don't see the cracked DVDs because they're inside the

1 packaging.

2 Q Let me go back to the beginning of the line
3 of questioning. I didn't ask you whether the Postal
4 Service employees visually observed the damage of a
5 piece.

6 My question is whether the Postal Service
7 operational decisions are designed to minimize the
8 breakage whether or not it's visible at the time.

9 A For Netflix DVDs?

10 Q Yes.

11 A Could you repeat the question again, Mr.
12 Levy?

13 Q Yes. Does the desire to minimize breakage
14 of Netflix DVDs -- let me strike that and begin again.

15 Is the desire of Postal Service management
16 to minimize the breakage of Netflix DVDs a reason for
17 providing manual culling of those DVDs?

18 A No.

19 Q It's not given any consideration at all?

20 A I think in your question you said the
21 primary.

22 Q No. My question does not have the adjective
23 primary. That's my next question.

24 A Okay. No, no more than damage to anyone
25 else's mail pieces.

1 Q So the Postal Service gives no more weight
2 to the desirability of minimizing the breakage of
3 Netflix DVDs than it does to minimizing the
4 destruction of the contents of any other piece of
5 mail?

6 A In the context that you're asking the
7 question, no.

8 I don't even like to use the word cull with
9 Netflix because again the pieces, the vast majority of
10 the pieces are separated at the first handling.
11 They're not really culled through a culling belt or
12 some type of a separation point through the machinery.
13 It's not a real cull.

14 Q It's separation at the point of first
15 handling?

16 A Yes.

17 Q That's done by human beings?

18 A Yes.

19 Q Done by human beings manually?

20 A Yes.

21 Q To separate the Netflix pieces, they touch
22 them with their hands?

23 A Yes. The carriers touch all the mail pieces
24 with their hands.

25 Q And they put their hands on the Netflix

1 pieces and they pull them out of the rest of the
2 piles?

3 A As they're collecting them, yes.

4 Q And they set them in a different location?

5 A Yes.

6 Q Can you go to page 10 of your testimony?

7 A Okay.

8 Q I want to direct your attention to the
9 sentence beginning at line 13:

10 "My understanding is that the guidelines
11 were issued to decrease the possibility of mail piece
12 damage due to the way letter tray or flat tray tubs
13 were stacked without the appropriate tray lid or tray
14 sleeve or lid." Do you see that sentence?

15 A Yes.

16 Q Now, what guidelines are you referring to
17 there?

18 A There was a letter of instruction that came
19 out many years ago because what was happening is we
20 were using our regular MM tray, which is about three
21 inches high, three and a half inches high, and the
22 DVDs, once they were trayed up in that tray they
23 extended above the top and when you stack 15, 18 trays
24 the bottom trays, the DVDs were cracking or bending.

25 Again, that wasn't visible to the people

1 that were loading the containers. They weren't
2 intentionally squashing the DVDs. So we got
3 instructions or direction that we should try to use
4 the extended MM tray, which is higher than the DVD
5 mail piece, sleeve those and brick lay them so we
6 don't do large-scale damage to the DVDs that are in
7 the bottom of the container.

8 Q So in at least one instance the Postal
9 Service was concerned enough about the breakage of
10 Netflix DVDs to issue national instructions concerning
11 their handling?

12 A Yes.

13 Q And that policy has not been rescinded, has
14 it?

15 A I don't know. I don't know of a rescinding
16 of that.

17 Q You haven't seen any order of rescission?

18 A No, and we still dispatch them like that.

19 Q That is with the more protective way of
20 stacking and sleeving and traying?

21 A Yes, sir.

22 MR. LEVY: Excuse me for one minute.

23 (Pause.)

24 BY MR. LEVY:

25 Q And while we can debate about the reasons,

1 the fact is a very high percentage of Netflix incoming
2 mail is still pulled by hand away from the automation
3 letter stream. Isn't that right?

4 A By incoming do you mean the pieces being
5 mailed back by the households?

6 Q Correct.

7 A Yes.

8 Q That percentage is still over 70 percent?

9 A Yes.

10 Q Over 80?

11 A In some sites, yes.

12 Q Now would you go to page 20 of your
13 testimony?

14 A Yes.

15 Q Now, beginning on line 6 is Question and
16 Answer 23 that continues onto the following page,
17 right?

18 A The question starts on line 6, Question 23?

19 Q Yes.

20 A Yes.

21 Q And in that question and answer you give an
22 opinion on the fairness or unfairness of the treatment
23 that GameFly gets, right?

24 A Let me review that.

25 Q Sure. Take your time. And I'll direct your

1 attention to the next to the last line of the question
2 itself.

3 (Pause.)

4 A Yes.

5 Q Now, in that question and answer you are not
6 offering an opinion on whether the treatment given to
7 GameFly constitutes illegal discrimination under the
8 law, are you?

9 A I'm not following your question.

10 Q Yes. Let me restate it. In your testimony,
11 are you offering an opinion on the legal question of
12 whether the treatment of GameFly constitutes illegal
13 discrimination?

14 A I couldn't offer an opinion of legal or not
15 legal.

16 Q Because that's outside your expertise since
17 you're not a lawyer?

18 A Yes.

19 Q Would you go to page 21, Question 24?

20 A Yes.

21 Q Now, in that question and answer, that
22 question and answer continues onto page 22? I'm
23 sorry. It does not. That question and answer goes
24 from line 15 to line 26 of page 21?

25 A Yes.

1 Q Do you have a copy of the letter from Andrew
2 German that's referred to in the question?

3 A Yes, I do.

4 MR. LEVY: For the convenience of the
5 transcript, I would like to have that marked as Cross-
6 Examination Exhibit 8.

7 (The document referred to was
8 marked for identification as
9 Exhibit No. GFL-CX-8.)

10 COMMISSIONER BLAIR: Thank you. The
11 reporter has the cross-examination exhibit? Okay.

12 BY MR. LEVY:

13 Q Cross-Examination Exhibit GameFly 8 is the
14 same Andrew German letter that you were referring to
15 in response to Question 24 of your testimony?

16 A Yes.

17 Q Now will you turn to your response to
18 GameFly Interrogatory T-3-27?

19 A Got it.

20 Q Now, that answer says, and I'm paraphrasing,
21 not quoting, that the supposed positive impact of
22 culling Netflix pieces would be accrued even if
23 Netflix picked up its pieces at fewer facilities. Is
24 that a fair paraphrase?

25 A Yes.

1 Q So why for GameFly to get the same kind of
2 handling is it necessary for GameFly to pick up its
3 pieces at the same number of facilities as Netflix?

4 A I'm not following you.

5 Q Well, one of the conditions of the offer
6 made in Mr. German's letter is that GameFly must take
7 delivery of its mail via caller service at
8 approximately 130 locations, and then it continues.
9 That's on page 2 of the letter, the third bullet. Do
10 you see that?

11 A Yes.

12 Q One hundred and thirty locations is about
13 the same number that Netflix picks up at?

14 A Yes.

15 Q Why is that condition necessary if USPS can
16 get economies with a smaller number of pickup
17 locations?

18 A The efficiencies are different. The
19 efficiencies that are obtained by more numerous pickup
20 points, it avoids the Postal Service having to load,
21 transport and unload containers to the consolidation
22 facilities.

23 It also ties to the efficiency of the
24 density and visibility. If the density was the same
25 as Netflix then there wouldn't be a question of do we

1 have enough pieces where it's easily identifiable?
2 Does it make sense for the carriers and the clerks in
3 the field to take advantage of that first handling?

4 If we're looking for a needle in a haystack
5 it's really not efficient, so I guess that would be
6 the best way to describe it. The efficiency is from
7 less container handling and hauling.

8 Q Well, if GameFly agrees to Mr. German's
9 conditions, GameFly still won't have the same density
10 as Netflix, correct?

11 A The total number of pieces of GameFly mail
12 is less, is substantially less.

13 Q But the Postal Service in Mr. German's
14 letter says it is willing to offer the same treatment
15 even without, as you say, the same density, correct?

16 A I don't recall reading that. I understood
17 it to be the same visibility and density.

18 Q Where does it say in Mr. German's letter
19 that it has to be the same density?

20 A I guess it does not refer really to density.
21 It refers to more visibility.

22 Q Right. You also mentioned in your answer
23 transportation costs. The idea here is that if
24 GameFly has more pickup points then the Postal
25 Service's transportation hauls are shorter?

1 A Yes.

2 Q And that saves the Postal Service
3 transportation costs?

4 A Yes.

5 Q I believe you or one of the other witnesses
6 indicated that currently the average haul for a
7 GameFly piece in the postal system is 459 miles. Do
8 you recall that number?

9 A I don't recall if I said that or not.

10 Q Do you recall whether anyone at the Postal
11 Service said that?

12 A Not off the top of my head I don't.

13 Q All right. Do you know what the difference
14 is in average haul in the postal system between
15 Netflix and GameFly return pieces?

16 A Yes. I had that in one of my responses to
17 an interrogatory. I had a staffer put together based
18 on origin zip, origin PDC, how far the pieces have to
19 travel.

20 Q The average travel distance was 459 miles
21 for GameFly and 70 miles for Netflix, according to
22 your answer?

23 A It would be in my response to the
24 interrogatories.

25 Q Would you accept that distance?

1 A Yes. It sounds about right.

2 Q How much more does it cost per ounce to
3 transport mail 459 miles rather than 70 miles?

4 A I don't have an analysis to state the
5 difference on the cost of the extra handling.

6 Q But I'm asking you about the cost of the
7 extra transportation.

8 A I wouldn't know that. I'm just using my
9 experience. I mean, if we have to have an additional
10 container on a truck that takes up time to load the
11 container, the cost of transporting that container if
12 it's a container we wouldn't have had to transport.

13 We would at least save the handling to load,
14 transporting of the container and then the cost of
15 unloading.

16 Q You can't give me even an order of magnitude
17 estimate of what the cost per ounce is?

18 A No.

19 Q How many ounces of mail does an average
20 container in a truck carry?

21 A The containers usually weigh around 240
22 pounds empty and around 600 to 700 pounds full.

23 Q So that's about 400 pounds of mail?

24 A Yes.

25 Q Or about 6,400 ounces of mail?

1 A I'd have to take a shoe off to do that
2 calculation. Again, I'm just using my experience on
3 about how much mail is in a container. You know, I'm
4 not a transportation network expert.

5 Q But the container typically has several
6 thousand pieces in it, doesn't it?

7 A Oh, yes.

8 Q So whatever the cost of transporting the
9 container, they would be divided into a large number
10 of pieces?

11 A Yes.

12 Q So the per piece cost is likely to be quite
13 small?

14 A If you took it to a per piece calculation,
15 yes, it would be small, but you are incurring
16 additional handling.

17 Q Well, when it came to the cost -- no. Now
18 continuing with Mr. German's letter, Mr. German's
19 letter doesn't explicitly commit to GameFly receiving
20 the same percentage of manual processing as Netflix,
21 does it?

22 A I don't see that in here.

23 Q We didn't either. And you've testified on
24 page 2 of your testimony that operating managers have
25 a lot of discretion at the local level?

1 A Could you refer me to where I'm testifying
2 to that?

3 Q Sure.

4 A Because I need to be real clear on
5 discretion. There is not a lot of room for creativity
6 in the field. I mean, there are very strict
7 guidelines, operating plans, parameters, budget costs,
8 service standards.

9 The facilities are so reliant on each other.
10 The delivery offices are so reliant. There's a very,
11 very structured and strict routine that's followed
12 every day.

13 Q Will you go to page 2 of your testimony?
14 Question 4: "What role does local discretion play in
15 mail processing decisions that affect the processing
16 of DVD mail, including decisions to cull DVD return
17 mail and process it manually?" Do you see that?

18 A Yes. We're referring to DVD mail only.

19 Q And then, "Local plant management is
20 empowered to develop local operating procedures given
21 their own unique operating conditions." Do you see
22 that?

23 A Yes.

24 Q So is it your testimony that local plant
25 managers have lots of discretion in processing DVD

1 mail, but very little discretion about anything else?

2 A I wouldn't say that they have no discretion
3 on DVD mail. The situation dictates pretty much what
4 they have to do.

5 And what I mean by discretion is
6 variability. It's really diverse amongst the
7 facilities' mail arrival profiles, quantity of
8 different type of mail that hit them at different
9 times. That's what I'm referring to.

10 It's very hard for someone to dictate to a
11 facility that you will do this at this time. However,
12 what we do is at this time you must be clear, like the
13 2230 number that I used for outgoing clearance
14 operations. You must clear at this time.

15 What happens up to that time in the couple
16 hours proceeding is really a local initiative based
17 off of their arrival profile, mail bases, staffing
18 level, everything I listed here. Weather. Everything
19 plays an impact in that.

20 Q If GameFly agreed to Mr. German's terms, the
21 Postal Service Headquarters, would it have any way of
22 enforcing a particular level of manual processing for
23 GameFly pieces out in the field?

24 A I would think so, yes.

25 Q Well, I thought I just heard you say that

1 that decision was left to local discretion.

2 A Not all decisions are left to local
3 discretion. You know, we dictate to the field how we
4 do some of the processing, how we handle certain
5 specific mail types. Prescription drugs are an
6 example. They're handled a specific way when they're
7 mailed.

8 If Headquarters would enter into some
9 agreement with GameFly and say this is going to be our
10 national policy then we would have to find a way to
11 follow that policy.

12 Q So Headquarters could take away the
13 discretion of local management about the level of
14 manual processing of GameFly pieces if it chose to do
15 so?

16 A Yes.

17 Q And the fact that the degree of manual
18 processing of GameFly pieces is left to local
19 discretion exists because Headquarters tolerates that?

20 A Well, Headquarters wants to avoid dictating
21 a lot of specific parameters because what they do is
22 we in the field have been hit with budget service
23 standards, commitments to other facilities that is a
24 very high mark.

25 You know, we are gauged by how we perform to

1 those targets and marks and goals. You know, I like
2 to use the word stifle. If I stifle a local plant
3 manager or an MDO then I have to understand what the
4 repercussions are going to be.

5 If I'm going to ask them to perform certain
6 things, then I'm taking things out of their control
7 and flexibility to obtain and meet their goals.

8 Q I'm sorry. Perhaps my question was badly
9 worded.

10 The discretion that local operating
11 officials currently have in the degree of manual
12 processing to give to GameFly mail pieces is the
13 result of a conscious decision by Headquarters not to
14 impose a requirement, correct?

15 A I'm not following you. Manual processing of
16 GameFly?

17 Q How GameFly DVDs are processed is left to
18 the discretion of local operating officials.

19 A I think the current GameFly piece design
20 dictates the mail flow of the GameFly piece. It goes
21 through flats processing with all the other flats.

22 Q How DVDs enter at letter automation rates at
23 present is currently left to the discretion of local
24 operating officials?

25 A For the most part, yes.

1 Q And for the most part includes whether to
2 process it manually or through automated equipment?

3 A I don't know of any facility that processes
4 DVDs in a letter automation manually.

5 Q Maybe my question was unclear. Take a
6 piece, a DVD mailer, that is entered at one ounce
7 letter automation rates.

8 Whether to run that piece through the
9 automated letter processing or to pull it out and give
10 it culling or whatever phrase you would prefer to use
11 is a decision that is left to the discretion of local
12 operating officials, correct?

13 A Repeat that one more time for me.

14 Q Do you have in your mind a piece that's
15 entered as a one ounce letter at automation letter
16 rates and contains a DVD in it?

17 A Okay.

18 Q Netflix return mailers fit that description,
19 don't they?

20 A Yes, they do.

21 Q The decision whether to process that kind of
22 mail piece manually or through the automated equipment
23 is a decision that is left to the discretion of the
24 local officials, isn't it?

25 A Yes.

1 Q And it's left to the discretion of the local
2 officials by a conscious decision of Headquarters,
3 isn't it?

4 A They haven't stated otherwise.

5 Q And they're aware of the situation?

6 A Yes.

7 Q Because, for example, they got that 2007 OIG
8 report? Are you aware of that report?

9 A Yes. I've read that report. It's part of
10 the record.

11 Q Now would you go to -- you're going to have
12 to help me on this. There's a point in your testimony
13 where you talk about GameFly paying for confirmed
14 service.

15 A Yes.

16 Q What page is that?

17 A I don't know what page that is.

18 Q You have a discussion of theft.

19 A I'd have to flip through. Do you know
20 which --

21 Q Yes. I'm having to flip through too.

22 (Pause.)

23 Q Okay. Mr. Field has found it. Page 17,
24 line 15. Would you go there?

25 A Yes.

1 Q In the paragraph that begins on line 15 and
2 ends on line 24 you discuss, among other things, theft
3 of GameFly pieces in the mail.

4 A Yes.

5 Q And then you state in your last phrase in
6 that paragraph, "It is not clear to my..." -- I assume
7 you mean me?

8 A Yes.

9 Q "It is not clear to me why GameFly would
10 request any form of manual processing." Do you see
11 that?

12 A Yes.

13 Q Now, have you ever discussed the theft issue
14 with GameFly?

15 A No.

16 Q One further question. If GameFly agreed to
17 terms specified in Mr. German's letter, GameFly would
18 not get the same percent of manual processing that
19 Netflix gets unless the Postal Service issued an SOP
20 or other high level order directing local officials to
21 provide that high level of manual processing. Isn't
22 that correct?

23 A That would be tough to answer. If it was a
24 visibility it would probably get pretty good results,
25 but the density is so low. You know, again it's very,

1 very few pieces when you talk about per facility.

2 Q So because of your view about the density,
3 it's your view that GameFly would not get the same
4 level of manual processing without a directive by
5 Postal Service Headquarters?

6 A I don't know if it would have to be
7 Headquarters, but if we received instruction that we
8 were to separate that piece at collection point we'd
9 have to come up with some type of at least local
10 instruction to get it accomplished with people out in
11 the field to do it.

12 Q In your opinion, would that instruction be
13 effective? Would the employees follow it?

14 A Yes.

15 MR. LEVY: I have no further questions.
16 Thank you.

17 COMMISSIONER BLAIR: Thank you, Mr. Levy.
18 Mr. Costich, do you have any questions?

19 MR. COSTICH: Yes, I have a couple of
20 questions.

21 COMMISSIONER BLAIR: Please proceed.

22 CROSS-EXAMINATION

23 BY MR. COSTICH:

24 Q Some of Mr. Levy's cross-examination
25 concerned whether manual culling makes sense for the

1 Postal Service. Do you recall that?

2 A Yes.

3 Q And I believe you said that the culling
4 makes sense when it can be done at the first touch?

5 A Yes.

6 Q And that would be or often would be the
7 carrier?

8 A Yes.

9 Q You also said that density enters into the
10 decision as to whether to cull. Is that correct?

11 A Yes.

12 Q Are there any other conditions that lead to
13 the decision to cull?

14 A Besides density and visibility, we will cull
15 mail, and again I don't even like to use the phrase
16 cull, but if we're talking about culling mail one of
17 the decisions we'll do is cull mail, not just DVD
18 mail. It's mail with the potential to do damage or
19 cause interruptions to operations.

20 A lot of mailers mail pens, pencils, coins.
21 We will cull that out to avoid any interruption or
22 jams.

23 Q How do you identify those kinds of pieces?

24 A They'll either identify them at the entry
25 point in the local bulk mail entry units and tag them

1 for manual processing, or in a lot of cases people
2 will just put first class stamps on them and drop them
3 right into collection boxes.

4 We'll try to get those when we're dumping
5 into the system. We'll try to observe them at that
6 time or at least get them when they're at the buffer
7 ledge of the AFCS before they hit any of the
8 equipment.

9 Q So these are pieces that might damage the
10 equipment?

11 A Yes.

12 Q Do any other DVD mailers meet your
13 qualifications for culling?

14 A The two big -- really being on is Netflix
15 because, again, the density and visibility, but they
16 tend to take Blockbuster out at the same time. The
17 carriers tend to pull it at the same time.

18 Q And that is just as visible as Netflix?

19 A Yes, it's nice bright yellow.

20 Q Other than Blockbuster, there aren't any
21 other DVD mailers that are pulled for manual
22 processing?

23 A Not in the letter mailstream that I'm aware
24 of or I see on a daily basis.

25 Q You mentioned pieces that might damage the

1 equipment, pieces that you try to pull for manual
2 processing. Are there any other pieces of First-Class
3 Mail that -- letter shaped First-Class Mail that would
4 be pulled for manual processing?

5 A Well, there are many examples on smaller
6 scales, but tax returns for local townships or
7 counties, those tend to not run well through the
8 equipment, so we'll try to keep that mail out and run
9 in a special cancel only mode if there are stamps on
10 it so it doesn't damage the equipment. There is -- I
11 use in my testimony the doe licenses for the deer
12 season in Pennsylvania is a real flimsy mail piece.
13 We try to pull those out because them will jam. There
14 are some examples like that.

15 MR. COSTICH: Thank you. No further
16 questions.

17 COMMISSIONER BLAIR: Thank you, Mr. Costich.

18 Do we have questions from the bench?
19 Commissioner Langley?

20 COMMISSIONER LANGLEY: Thank you, and thank
21 you, Mr. Seanor, for your testimony and being here
22 today.

23 I'm just curious. You have extensive
24 experience in the eastern area, especially
25 Pennsylvania, Ohio, and I was surprised that you

1 hadn't seen this Eastern Area SOP, and so I guess the
2 first time you saw it was when the postal attorney
3 showed it to you?

4 THE WITNESS: Yesterday, yes, ma'am.

5 COMMISSIONER LANGLEY: Had anything like
6 that ever been discussed within the district or within
7 the area itself?

8 THE WITNESS: Some of the districts have
9 instructions for the delivery units and it's on how to
10 handle, you know, Netflix, Blockbuster DVDs. In fact,
11 most of them have their own little internal
12 communication structure. But as far as a formal area
13 SOP, I had not seen that.

14 COMMISSIONER LANGLEY: You hadn't seen that.
15 You mentioned that the delivery unit would have
16 instructions on how to separate --

17 THE WITNESS: Yes.

18 COMMISSIONER LANGLEY: -- the DVDs?

19 THE WITNESS: Yes.

20 COMMISSIONER LANGLEY: And that too
21 surprised me because I thought the separation -- you
22 used the term "separation" rather than culling, and
23 one, I'd really be interested in knowing the
24 difference between separation and culling, but I
25 always thought the separation occurred at the plant,

1 and not at the delivery unit. So are these letter
2 carriers or supervisors? Who is actually doing the
3 separation?

4 THE WITNESS: For the most part it's the
5 letter carriers and the window clerks. But it's
6 really changed over the years. You know, the hit
7 we've taken in cancellation volume is just tremendous,
8 and I know the Board sees -- you know, the Commission
9 sees the revenue figures, but the amount of work going
10 across the AFCSES has got to be 25 percent less than
11 it was even five years ago, and what we've seeing is,
12 you know, there is a reduction in collection
13 mailboxes, so the amount of mail that carriers are
14 picking up from the street is a higher percentage than
15 what it used to be, so they have a better opportunity
16 getting it.

17 Myself and many of my plant managers, we do
18 not support -- when the mail comes out of the
19 collection blue boxes, it's a complete mix, and that's
20 what I'm referring to as culling. If someone has to
21 go through all those pieces out of a collection box
22 and pull something out, that's a lot more manual
23 intensive and that was not the -- you know, that takes
24 times.

25 I don't care for that. I don't want them

1 going through that. I want to leverage, and what I've
2 instructed the plants that I'm responsible for, and as
3 you can see I've been responsible for close to 20 of
4 the plants in the eastern area personally, I want them
5 to take advantage of the first handling, and I don't
6 require anyone to cull any pieces once they are in
7 that big hamper full of collection mail. If it goes
8 into the system it goes into the system.

9 And I know Netflix doesn't want to hear that
10 probably but that's the way it should be done because
11 that's the most efficient way to process it. But we
12 still have -- you know, some of the senior operators
13 on the ASCS, you know, they have the experience where
14 they can pick pieces out without any detriment to the
15 other pieces that are on that ledge or causing any
16 double feeds or double pick off at the ASCS buffers,
17 and they will do it as well and they will put it in
18 like a half tray.

19 I know in the document it says there is to
20 be tubs at all -- you know, in these SOPs it says
21 "tubs". I don't see tubs. They usually have a half
22 tray or something like that in the places that are
23 doing it.

24 As I spoke with Mr. Levy, you know, I do
25 have a couple of sites in the eastern area that they -

1 - they debate whether there is any costs associated
2 with even the carriers doing it, and they absolutely
3 don't want them touching anything, so all of it is
4 completely through the system, and the debate I have
5 with that -- again, since I'm only been the area MIP
6 for the last six months, so I really didn't have any
7 say in their operations before. The discussions I had
8 with them is we really need to determine what the
9 impact is, the jamming impact and the machine
10 performance, if it makes sense to take advantage of
11 that first handling in there units, delivery units as
12 well.

13 COMMISSIONER LANGLEY: so are you saying
14 that the blue collection mail is first touched?

15 THE WITNESS: By the plant.

16 COMMISSIONER LANGLEY: By the plant. So
17 even though a carrier picks up the blue collection box
18 mail, that goes straight to the plant, not to --

19 THE WITNESS: Yes, that goes straight to the
20 plant.

21 COMMISSIONER LANGLEY: And so that's where
22 culling could occur if somebody has the expertise to
23 really pick things out of the mail.

24 THE WITNESS: Yes.

25 COMMISSIONER LANGLEY: With the decline in

1 the number of blue collection boxes, is there less of
2 that type of mail coming into the plant?

3 THE WITNESS: I would say that it is much
4 less than what the carriers are picking up now, and I
5 don't have a percentage on that. We might be able to
6 obtain something like that. We could try to. But I
7 would say the carriers are bringing in the volume.

8 COMMISSIONER LANGLEY: The carriers are
9 bringing in the volume.

10 THE WITNESS: Yes, and not out of the blue
11 collection boxes. From what they're picking up at the
12 businesses, the households, out of the mailboxes.

13 COMMISSIONER LANGLEY: And just so I am
14 absolutely sure, there is no national policy for how
15 to handle Netflix's mail?

16 THE WITNESS: Not the individual pieces.
17 The only national instructions is the one for the
18 stacking of the full trays in the container so we
19 don't crush hundreds of pieces at a time.

20 COMMISSIONER LANGLEY: And anything on local
21 policies for DVD mail in general, things other than
22 Netflix?

23 THE WITNESS: That would be at the local
24 level, not a national level.

25 COMMISSIONER LANGLEY: That's strictly a

1 local.

2 THE WITNESS: Yes.

3 COMMISSIONER LANGLEY: Thank you.

4 COMMISSIONER BLAIR: Commission Hammond, do
5 you have questions?

6 VICE CHAIRMAN HAMMOND: I have no additional
7 questions, Commissioner. Thank you.

8 COMMISSIONER BLAIR: Thank you. Mr. Seanor,
9 just to build upon what Commissioner Langley discussed
10 with you, is it a correct understanding that culling
11 could take place -- could, not does -- could take
12 place from collection from the blue box at the local
13 DDU or post office when the mailer returns it to the
14 post office or at the plant? Is that a correct
15 understanding of --

16 THE WITNESS: That could take place, yes.

17 COMMISSIONER BLAIR: At all three places.
18 But there is no national policy governing the
19 procedures in this area?

20 THE WITNESS: No, there is not.

21 COMMISSIONER BLAIR: Are there any national
22 policies regarding culling of DVDs in general other
23 than the stacking?

24 THE WITNESS: No.

25 COMMISSIONER BLAIR: Okay. Well, thank you.

1 Appreciate your willingness to testify today.

2 Mr. Mecone, would you like some time with
3 your witness to prepare him for any redirect or
4 anything?

5 MR. LEVY: Excuse me, Commissioner Blair.
6 If I may, Commissioner Langley's questions prompted
7 some additional questions that I would like to ask
8 before redirect occurs.

9 COMMISSIONER BLAIR: Okay. Mr. Mecone, do
10 you mind to have him go ahead and continue his cross-
11 examination?

12 MR. MECONE: That's fine.

13 COMMISSIONER BLAIR: Okay.

14 MR. LEVY: Thank you.

15 FURTHER CROSS-EXAMINATION

16 BY MR. LEVY:

17 Q In response to questioning from
18 Commissioner Langley, I think I heard you say that
19 while you hadn't seen the document marked GFL-Cross
20 X5, the Eastern Area Standard Operating Procedure
21 before yesterday.

22 A Yes.

23 Q Do subordinate facilities in the Eastern
24 District have instructions on how to process DVD
25 mailers?

1 A Yes, there are local instructions.

2 Q Are those local people who make those local
3 instructions subordinate of yours?

4 A No.

5 Q So you don't have the power in your position
6 to influence their decisions?

7 A Not in the delivery units, no.

8 Q Do those instructions call for the
9 separation of DVD mailers?

10 A Yes.

11 MR. LEVY: No further questions. Thank you.

12 COMMISSIONER BLAIR: Before we go to time
13 for redirect, Mr. Costich, do you want to follow on
14 with any questions?

15 MR. COSTICH: No. Thank you, Commissioner
16 Blair.

17 COMMISSIONER BLAIR: At this point, Mr.
18 Mecone, would you like some time with your witness for
19 redirect?

20 MR. MECONE: Could we have 25 minutes,
21 please?

22 COMMISSIONER BLAIR: How about 20?

23 MR. MECONE: Twenty is fine. Thank you.

24 COMMISSIONER BLAIR: Well, we will reconvene
25 at 11:20. How is that?

1 The hearing is temporarily adjourned.

2 (Whereupon, a short recess was taken.)

3 COMMISSIONER BLAIR: The hearing will
4 resume.

5 Mr. Mecone, would you like to engage in any
6 redirect with your witness?

7 MR. MECONE: Yes.

8 COMMISSIONER BLAIR: Please proceed.

9 REDIRECT EXAMINATION

10 BY MR. MECONE:

11 Q Mr. Seanor, Commissioner Langley asked you a
12 question about the Eastern Area SOP. To your
13 knowledge, was that SOP ever issued?

14 A No.

15 Q If it was issued, would you have been aware
16 of it?

17 A Yes.

18 MR. MECONE: The Postal Service would just
19 like to note for the record that we recently obtained
20 information regarding this document that indicates
21 that it was not issued, it never issued, and we will
22 update the Commission if we receive information that
23 states otherwise, and I would just want to point out
24 that this is one of the problems that can arise when
25 documents are admitted into evidence without any

1 authentication.

2 MR. LEVY: Do I get to respond to that if we
3 are going to be having legal argument now?

4 COMMISSIONER BLAIR: Mr. Mecone?

5 MR. MECONE: I'm just offering for the
6 record to make it clear about that document. I didn't
7 intend to have any type of legal discussion and legal
8 argument.

9 MR. LEVY: Well, I would like to offer for
10 the record a brief response to that since that wasn't
11 really redirect questioning. That was a little
12 statement.

13 This document was produced in response -- by
14 the Postal Service in response to an institutional
15 discovery request. We did a follow-up interrogatory
16 on it which was the other cross-examination exhibit,
17 and they stated that the document was still in effect
18 as we discussed.

19 We then cited the document in our April
20 filing at considerable length and repeatedly. At no
21 point did the Postal Service tell us that the document
22 was inoperative. In litigation, if the rules of
23 litigation means anything, you can't lead a party on
24 like this and institutionally give an answer, and then
25 at the very eleventh hour say, oops, sorry, it was

1 inoperative. That's the end of my comment.

2 MR. MECONE: I would just like to respond
3 quickly. GameFly counsel mischaracterizes the Postal
4 Service's response to Interrogatory 106, which is the
5 one he's referring to. The statement said that the
6 Eastern Area SOP -- okay, I can quote the reference.
7 "The reference to the Eastern Area SOP being rescinded
8 was in error." It says nothing about whether the
9 Eastern SOP was ever issued.

10 COMMISSIONER BLAIR: To limit the back and
11 forth as to what the documents are in question since
12 we are on redirect, I will allow Mr. Levy to reply to
13 your comment and then if we could proceed with the
14 redirect at this point.

15 MR. LEVY: Thank you. I will note only that
16 on the top right-hand corner of the SOP is the word
17 "Rescinded". That characterization was placed by the
18 Postal Service. We didn't say it was rescinded. We
19 didn't have any way of knowing. To say that something
20 has been rescinded implies that it once was in effect,
21 and then to say, no, it wasn't rescinded, the only
22 logical inference is that it is still in effect.

23 COMMISSIONER BLAIR: Mr. Mecone, would you
24 please proceed?

25 BY MR. MECONE:

1 Q GameFly counsel asked you some questions
2 about efficiency and whether there were any studies to
3 back up particular processing decisions.

4 What assurances does the Postal Service have
5 that the decisions being made in the field about
6 processing of mail are efficient?

7 A I touched on this briefly, but I think I
8 need to make sure everybody understands, and I
9 mentioned budgets, service, clearance times.

10 Each one of the districts and the plants in
11 those district have a very strict budget process that
12 starts at the higher level and then they have the
13 latitude to disburse those budget amongst their
14 facilities and amongst the cost centers in those
15 facilities. But the initial budget comes from
16 headquarters, then through the area, down to the
17 districts.

18 The plant managers and district managers are
19 held to this budget standard as well as the service
20 standards, but on the budget there are daily reviews
21 of budget performance by work center. There are
22 weekly district reviews conducted by the eastern area
23 and all different function -- mail processing,
24 delivery, customer service, and maintenance, as well
25 as transportation, weekly one-hour budget reviews, and

1 they hit on everything from workout performance by
2 operations, overtime usage, sick leave usage.

3 And then we have a formal on-site which is
4 generally a four-to-six-hour review once a quarter
5 with each one of the districts, and this is just not
6 let go for weeks and we see how they are doing, if
7 they are making changes. Some of these reviews
8 actually detail day-to-day performance in some of the
9 key metrics such as overtime usage, or dock operation,
10 which we refer to as LDC-17 type usage, so that we can
11 see continuous improvements on a daily basis.

12 This is a large part, as the Commission
13 knows, of the structure for the EAS pay schedule and
14 the National Performance Assessment. Our total
15 operating expense generally account for at least half,
16 with service and safety being the other half of the
17 performance assessments.

18 So, this is not taken lightly. Every time
19 any operation is over budget from the previous day
20 it's questioned, why overtime hours are used is
21 questioned, what we got for the overtime hours used is
22 in question, and the same holds true with the service.

23 The service is reviewed and phone calls are
24 made almost daily on service, but there is a weekly
25 service review where we pick one of the service

1 categories, whether it be First-Class Mail, Priority,
2 Express or mailer volume, and we review in detail
3 using all available databases to determine where the
4 failures are occurring.

5 So, the plant managers on a nightly basis
6 have to operate with this in mind. They have to hit
7 these budget targets and they have to hit these
8 service targets, and if they don't it will be very
9 visible. It will be glaring. And if they fail hand
10 off to any of their partners, which could be other
11 mail processing facilities or other delivery units, it
12 will be very visible and discussed. So, there is a
13 lot of motivation for the plant managers to make their
14 budgets, their service and their efficiency targets.

15 Q As part of the questioning about studies,
16 there was a reference to the Christianson study. Do
17 you want to elaborate at all on the significance of
18 this study in the local decisionmaking process?

19 A Yes. When I first got the interrogatories
20 from Mr. Levy and GameFly, I wasn't comfortable with
21 the fact that I couldn't cite a Lean 6 Sigma project
22 or a study to -- you know, to answer for why we do
23 things the way we are.

24 But then when I was able to review the
25 Christianson study just a couple of weeks ago, I saw

1 that for the first, and as I read through this it was
2 between pages 64 and 65, and I mentioned that in my
3 discussion with Mr. Levy, the significance, I almost
4 felt vindicated by the information that that data tech
5 from Christianson had put down.

6 And I looked at the amount of DVD mail
7 pieces that were handled at the dock before they got
8 into the automated equipment, the AFCSES or the
9 DBCSES, and I looked at how many minutes that they
10 cited that our staff had used, and this is what I saw
11 every night, but I just couldn't prove it. And that
12 was kind of my proof. It's like right there it is.
13 And if you do the simple calculations using the same
14 work hour costs that they use for our labor rate, I
15 mean, we're talking less than four cents a piece if we
16 handle these properly at the first handle.

17 So it was significant, and I wanted to make
18 sure that that was brought up. I would have brought
19 it up in my answers to the interrogatories if I had
20 seen it before that I had the data on those.

21 Q Just to clarify, you made reference to pages
22 64 and 65. Are you referring to the Christianson
23 study or something else, the interrogatories you saw?

24 A They were responses to interrogatories, but
25 I just remember it was on page 64 and 65 in my PDF

1 file. If you need me to get a copy of that, I can. I
2 think it's submitted for the record though.

3 COMMISSIONER BLAIR: We'll include it for
4 the record.

5 BY MR. MECONE:

6 Q GameFly counsel questioning also addressed
7 the May 17th letter. Do you have that in front of
8 you?

9 A Yes, I do.

10 Q Could you read the last paragraph, please?

11 A "The Postal Service understands that the
12 plan described above will present difficult choices to
13 GameFly in planning and managing its operations. We
14 are willing to explore any particular problems and to
15 see reasonable alternatives that may be available. We
16 are available to discuss these matters at your
17 convenience."

18 Q To your knowledge, as GameFly contacted the
19 Postal Service after receiving that letter?

20 A Not to my knowledge.

21 Q As part of the questioning regarding that
22 letter, the issue of commitment to a particular
23 processing came up. To your knowledge has the Postal
24 Service committed to provide Netflix a certain level
25 processing?

1 A No.

2 Q As area manager, have you ever communicated
3 a commitment to provide a certain level of processing
4 to Netflix?

5 A No, not to Netflix, but internally I want to
6 make sure that the -- what we are calling here, the
7 outbound product that's going to the home and
8 Netflix's customers is in DPS, and in that I kind of
9 look for because there is no reason why they cannot be
10 DPS, and if I see -- I get a report probably once a
11 month or once every two months from Netflix that shows
12 -- you know, with the intelligent mail -- I don't want
13 to say IMB -- the confirmed data -- they know that if
14 we put it in DPS or not. They know if it hit the DPS
15 operation numbers. So it let me know if there is
16 a facility that's not putting the mail in DPS, and
17 that concerns me.

18 Q You mentioned that Netflix provides week
19 reports or periodic reports?

20 A We do get weekly reports from Netflix on
21 what they refer to as damage or breakage, and one on
22 service: in other words, delivery service to their
23 customers and then the return service back to their
24 facilities.

25 Q Without getting into any details of other

1 reports, do you receive similar reports from an other
2 mailers?

3 A Yes, many. The large reports I get, off the
4 top of my head, are from JCPenney's. I get them from
5 Quad Graphics, Time-Warner. Several companies send us
6 delivery reports on how we are doing as far as on-time
7 delivery, reference to in-home dates, but there are
8 several.

9 Q GameFly counsel asked you about some
10 guidelines dealing with the trayng of Netflix's mail.
11 Is that unusual?

12 A Actually, no, it's not. Any of the outbound
13 trays that are going out of the facility to another
14 facility, another plant, generally it receives sleeves
15 and bands on them, and the Netflix piece is a little
16 bit unusual in that it's so tall. Most of the First-
17 Class Mail will fit in an regular NM tray and with a
18 sleeve on it. They receive the same type of stacking
19 and sleeving, and actually get banding, which we don't
20 do banding with Netflix.

21 Q Are there guidelines dictating that type of
22 treatment?

23 A No written guidelines. It's common sense.

24 Q Are you aware of any other national area
25 guidelines dealing with particular measure to protect

1 mail, other kinds of mail, not just limited to DVD
2 mail?

3 A Yes. We just rolled out a little over a
4 year ago the National Distribution Center concept, and
5 that dealt with doing the separations and the delivery
6 units, and then on the collection docks at the plants
7 to reduce handling and improve service for parcel
8 performance.

9 As far as protection and damage of mail, I
10 mean, there are national instructions. I can't think
11 of any national instructions right now, but I know
12 there is plenty of instructions on, you know, not
13 running bundles on top of single piece, you know, in
14 parcel equipment and stuff like that.

15 Q GameFly asked you a question about --
16 GameFly counsel asked you a question about your
17 testimony on page 20 in response to Question 23
18 dealing with you used the term "unfairness" and you
19 stated that you weren't making a legal conclusion or
20 using that term in a legal manner.

21 Could you explain what you meant by
22 unfairness in your testimony on page 20?

23 A Yes. When I refer to unfairness, GameFly
24 was contending that we're giving them, you know,
25 unfair treatment of Netflix by doing this, and it's

1 not unfair. It makes more economical sense for us to
2 do it as I've stated several times today.

3 Q GameFly counsel asked you a question that
4 referred to the Netflix's return piece being
5 automation compatible. As you responded to that
6 question, did you interpret that to mean eligibility
7 for automation rates?

8 A No, I just meant that as machinability.

9 Q There were a few questions related to local
10 discretion with processing. I think it would be
11 helpful if you would clarify what you interpret the
12 term "discretion" to mean.

13 A Discretion is the individual managers, plant
14 managers and their senior MDO staff on tour 3 and tour
15 1 to work within the parameters that are set, as I've
16 mentioned earlier, by budget and service constraints.
17 It would be very difficult to try and manage those
18 operations from afar on a nightly basis because there
19 are so many variable each evening, and then during the
20 third shift, or tour 1, what we refer to in the Postal
21 Service, that we have to have the ability for those
22 local managers to make decisions on their feet, and
23 you know, without having to make phone calls or try to
24 refer to books or reference documents. They should be
25 able to have the sense and the authority to make those

1 kind of calls.

2 Q Does the discretion of local officials
3 extend beyond DVD mail to other types of mail?

4 A It extends to every aspect of their
5 operation.

6 MR. MECONE: The Postal Service has no
7 further questions at this time.

8 COMMISSIONER BLAIR: Mr. Levy, would you
9 like to engage in any re-cross-examination?

10 MR. LEVY: Yes, I do.

11 COMMISSIONER BLAIR: Please proceed.

12 RE-CROSS-EXAMINATION

13 BY MR. LEVY:

14 Q Mr. Seanor, you were asked a question about
15 Netflix' weekly reports on breakage.

16 A Yes.

17 Q Do other companies send you damage reports
18 on a weekly basis?

19 A Not damage reports, no.

20 Q You talked about guidelines for protecting
21 other kinds of mail. Do you recall that?

22 A Yes.

23 Q Do any of those guidelines concern a single
24 mailer rather than a type of mail?

25 A There are some that refer to a single mail

1 flow. One that I can think of that, and I'm trying to
2 think of this and it's real hard to think of this
3 while you're sitting here, but the one that comes to
4 my mind is our passports. The passports, you know, we
5 dictated a national holdout and there's a specific
6 handling and accountability that must be done with
7 passports for obvious reasons, to make sure they're
8 processed in time and people get their passports back
9 from the passport facility in Philadelphia.

10 We also have and dictate specific handlings
11 for a lot of return mails that need ratings or
12 accounts for revenue protection, and those are
13 specific by some of the companies, you know, some of
14 the larger phone companies, you know, like Verizon,
15 AT&T, where they want parts back or equipment back.
16 There's a returns process that we go through for that.
17 Same with some of the large mailing houses, the
18 shopping networks, QVC, HSN, the large TV mailers.
19 There's specific requirements for the handling,
20 sortation, separation and rating for those type of
21 mails.

22 Q Those other customers don't enter their mail
23 at automation letter rates, do they, the mail that's
24 covered by those instructions?

25 A Not the ones I mentioned. No.

1 Q They pay much higher rates, don't they?

2 A I'm not sure what rates they pay.

3 Q Do any of the other guidelines concern the
4 protection of the mail of a single customer,
5 individual customer, from damage?

6 A Damage, in particular, no, I wouldn't say
7 anything addresses damage in particular.

8 MR. LEVY: Thanks. That's all I have.

9 COMMISSIONER BLAIR: Mr. Costich, any re-
10 cross-examination on your part?

11 MR. COSTICH: No, thank you, Commissioner
12 Blair.

13 COMMISSIONER BLAIR: Actually, I have a
14 short question for the witness. You mentioned the
15 weekly reports you receive from some mailers. Are
16 these requested by the Postal Service or is done at
17 the initiative of the mailer themselves?

18 THE WITNESS: This is done at the initiative
19 of the mailers.

20 COMMISSIONER BLAIR: Is this a standard
21 practice in the industry?

22 THE WITNESS: It's becoming more and more
23 standard with the visibility that's now available.

24 COMMISSIONER BLAIR: Is it something that
25 all mailers would have knowledge of or very similarly

1 situated mailers would have knowledge of that they can
2 engage in?

3 THE WITNESS: Yes.

4 COMMISSIONER BLAIR: Okay. And does GameFly
5 do this? Provide you with a weekly report?

6 THE WITNESS: No.

7 COMMISSIONER BLAIR: Thank you. Any other
8 questions from the bench? Well, thank you. I note,
9 Mr. Levy, you have a motion. We can entertain it now
10 before the witness leaves --

11 MR. LEVY: Yes.

12 COMMISSIONER BLAIR: -- or after the witness
13 is excused.

14 MR. LEVY: Let's do it now. I move GameFly
15 Cross-Examination Exhibits 5 through 8 into evidence.

16 MR. MECONE: The Postal Service would like
17 to renew its objection to five, which I believe is a
18 document that has not been authenticated. We stated
19 earlier, you know, the problem of admitting into
20 evidence documents that have not been authenticated.
21 As we saw with the eastern area SOP, we can't
22 authenticate whether that was issued. Then, finally,
23 in response to GameFly counsel's statement about the
24 rescinded note on that document, we have no idea who
25 wrote that. I mean, it hasn't been into evidence. So

1 that all goes along to support the objection.

2 COMMISSIONER BLAIR: Before we get engaged
3 in a lengthy back and forth, I would just suggest
4 that, Mr. Levy, you put your motion in writing and
5 allow seven days for the Postal Service to respond.
6 That way we can proceed.

7 MR. LEVY: That's fine.

8 COMMISSIONER BLAIR: Okay. Thanks.

9 MR. LEVY: But then six through eight are
10 without objection then, I take it? Let me repeat the
11 question for the benefit of Mr. Mecone. I take it
12 that there was no objection to the admission of Items
13 6 through 8? I just need to know how broad I have to
14 make this written submission.

15 COMMISSIONER BLAIR: Understood.

16 MR. MECONE: I think six through eight are
17 interrogatory responses and they would already be in
18 the record. Six and seven are interrogatory responses
19 that would already be in the record, so we don't
20 object to those, if they are already in the record.
21 Otherwise, we'd request that they're included in the
22 motion. Eight is the letter, which I believe is
23 already entered into evidence, so to the extent that
24 it's already been entered in, we don't object, but if
25 it has not been entered into evidence, we would

1 request that it's included in the motion.

2 COMMISSIONER BLAIR: It's my understanding
3 these have already been entered into the record at
4 this point, so without objection, six through eight
5 will be accepted, and that you'll be filing a motion
6 and the Postal Service will be given the opportunity
7 to respond with regards to Exhibit 5.

8 (The documents referred to,
9 previously identified as
10 GameFly Cross Exhibits 6
11 through 8, were received in
12 evidence.)

13 MR. LEVY: Thank you.

14 COMMISSIONER BLAIR: So that now concludes
15 Mr. Seanor's testimony. We appreciate it very much.
16 Thank you for coming today. You may be excused.

17 (Witness excused.)

18 COMMISSIONER BLAIR: Since we just took a
19 break a few minutes ago, why don't we go ahead and go
20 to our next witness. Mr. Mecone, can you call Mr.
21 Barranca, please?

22 MR. LEVY: May we have five minutes to
23 reorganize our papers?

24 COMMISSIONER BLAIR: That's fine. We'll
25 excuse ourselves for five minutes.

1 MR. LEVY: Thank you.

2 (Whereupon, a short recess was taken.)

3 COMMISSIONER BLAIR: The hearing will come
4 back to order. Mr. Foucheaux, will you please call
5 your witness.

6 MR. FOCHEAUX: Call Mr. Nicholas F.
7 Barranca. Mr. Barranca?

8 COMMISSIONER BLAIR: Why don't we swear the
9 witness in first.

10 MR. FOCHEAUX: Okay.

11 Whereupon,

12 NICHOLAS F. BARRANCA

13 having been duly sworn, was called as a
14 witness and was examined and testified as follows:

15 COMMISSIONER BLAIR: Mr. Foucheaux, please
16 proceed.

17 MR. FOCHEAUX: Thank you.

18 DIRECT EXAMINATION

19 BY MR. FOCHEAUX:

20 Q Mr. Barranca, you have in front of you two
21 copies of a document entitled Direct Testimony of
22 Nicholas F. Barranca on behalf of the United States
23 Postal Service, USPS-T-1. Is this your testimony that
24 you are sponsoring today?

25 A Yes, it is.

1 MR. FOUCHEAUX: I will note for the record
2 that this testimony was subject to some minor
3 revisions filed on October 8, and they should already
4 be in the Commission's files. I'm going to hand these
5 two copies of Mr. Barranca's testimony to the court
6 reporter and ask that they be entered into evidence.

7 (The document referred to was
8 marked for identification as
9 Exhibit No. USPS-T-1.)

10 COMMISSIONER BLAIR: Is there any objection?

11 MR. LEVY: No objection.

12 COMMISSIONER BLAIR: Hearing none, the
13 direct testimony of Mr. Barranca on behalf of the
14 Postal Service is received into evidence and is to be
15 transcribed.

16 (The document referred to,
17 previously identified as
18 Exhibit No. USPS-T-1, was
19 received in evidence.)

20 //
21 //
22 //
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WITNESS BARRANCA (USPS-T-1)

DESIGNATIONS OF WRITTEN CROSS EXAMINATION

GFL/USPS-T1-1 through 12

RESPONSE OF UNITED STATES POSTAL SERVICE WITNESS NICHOLAS F.
BARRANCA TO DISCOVERY REQUESTS OF GAMEFLY, INC.

GFL/USPS-T1-1. Please produce copies of all documents that you received in connection with your work in this case.

RESPONSE:

I received the following:

- 1) Complaint of GameFly, Inc., PRC Docket No. C2009-1 (April 23, 2009).
- 2) Memorandum of GameFly, Inc., Summarizing Documentary Evidence, PRC Docket No. C2009-1 (April 12, 2010).
- 3) Testimony of Sander Glick for GameFly, Inc., PRC Docket No. C2009-1 (April 12, 2010).
- 4) Joint Statement of Undisputed Facts, PRC Docket No. C2009-1 (July 20, 2009).
- 5) United States Postal Service documents and related documents cited in item 2, above (encompassed by the range of documents GFL1 through GFL81118).
- 6) Direct Testimony of Larry J. Belair (USPS-T-2), PRC Docket No. C2009-1 (July 7, 2010).
- 7) Direct Testimony of Troy R. Seanor (USPS-T-3), PRC Docket No. C2009-1 (July 7, 2010).
- 8) Direct Testimony of Robert Lundahl (USPS-T-4), PRC Docket No. C2009-1 (July 8, 2010).
- 9) Letter to David M. Levy, Esq., from R. Andrew German, dated May 17, 2010.

The documents listed have been filed previously in this docket.

RESPONSE OF UNITED STATES POSTAL SERVICE WITNESS NICHOLAS F.
BARRANCA TO DISCOVERY REQUESTS OF GAMEFLY, INC.

GFL/USPS-T1-2. Please produce copies of all documents that you reviewed in connection with your work in this case.

RESPONSE:

I reviewed the documents listed in the response to GFL/USPS-T1-1. These documents have been filed previously in this docket.

RESPONSE OF UNITED STATES POSTAL SERVICE WITNESS NICHOLAS F.
BARRANCA TO DISCOVERY REQUESTS OF GAMEFLY, INC.

GFL/USPS-T1-3. Please describe in any detail any oral information you received from the Postal Service in connection with your testimony in this case.

RESPONSE:

The Postal Service has objected to this discovery request in part. During the preparation of my testimony, I had brief conversations with Postal Service counsel and with personnel in Operations regarding the substance of GameFly's Complaint and the procedural steps necessary to present a Postal Service defense. I was provided with little or no information not also contained in the documents I reviewed. Information not necessarily encompassed by those documents would have consisted of brief comments concerning GameFly's contentions and brief discussion of what might constitute effective approaches to rebutting GameFly's factual assertions and legal conclusions.

RESPONSE OF UNITED STATES POSTAL SERVICE WITNESS NICHOLAS F.
BARRANCA TO DISCOVERY REQUESTS OF GAMEFLY, INC.

GFL/USPS-T1-4. Please produce your contract and any other instructions or other documents concerning the scope of your testimony in this case. If your instructions were entirely oral, please describe them.

RESPONSE:

The Postal Service has objected to this discovery request in part. There is no contract; I am employed by the Postal Service. I received no "instructions."

See my response to GFL/USPS-T1-3.

RESPONSE OF UNITED STATES POSTAL SERVICE WITNESS NICHOLAS F.
BARRANCA TO DISCOVERY REQUESTS OF GAMEFLY, INC.

GFL/USPS-T1-5. When were you asked to become a witness in this case?

RESPONSE:

My best recollection is that I was asked on June 24, 2010.

RESPONSE OF UNITED STATES POSTAL SERVICE WITNESS NICHOLAS F.
BARRANCA TO DISCOVERY REQUESTS OF GAMEFLY, INC.

GFL/USPS-T1-6. Before you were asked to become a witness in this case, did you discuss any of the following subjects with any employee or agent of the Postal Service? If so, please identify the individuals and state the date, location and substance of each discussion.

- (a) GameFly.
- (b) Netflix.
- (c) Blockbuster.
- (d) The processing of DVD mailers.
- (e) Rates or classifications for DVD mailers.
- (f) Causes of or remedies for DVD breakage.
- (g) Similarities or differences between GameFly and Netflix.

RESPONSE:

The Postal Service has objected to this discovery request in part. I do not recall having had specific discussions regarding these topics with Postal Service personnel during, at least, the past two years. Other than conversations with Postal Service counsel, I discussed the possibility of providing testimony on one occasion with Krista Finazzo, Manager, Operations Integration and Support. In the more distant past, I may have had discussions with other Postal Service personnel concerning the processing of DVD mail. I do not recall specific individuals or dates, although they would have been general discussions, not related to GameFly's specific relationship with the Postal Service, and unrelated to its Complaint. I do not recall any specific discussions or references to GameFly, Netflix, or Blockbuster. See also the response to GFL/USPS-T1-3.

RESPONSE OF UNITED STATES POSTAL SERVICE WITNESS NICHOLAS F.
BARRANCA TO DISCOVERY REQUESTS OF GAMEFLY, INC.

GFL/USPS-T1-7. Before you were asked to become a witness in this case, did you send or receive any emails or other documents to or from any employee or agent of the Postal Service concerning any of the following subjects? If so, please produce the documents.

- (a) GameFly.
- (b) Netflix.
- (c) Blockbuster.
- (d) The processing of DVD mailers.
- (e) Rates or classifications for DVD mailers.
- (f) Causes of or remedies for DVD breakage.
- (g) Similarities or differences between GameFly and Netflix.

RESPONSE:

The Postal Service produced all responsive documents in response to earlier discovery requests. Please see GFL505-506 and GFL2422-2423.

RESPONSE OF UNITED STATES POSTAL SERVICE WITNESS NICHOLAS F.
BARRANCA TO DISCOVERY REQUESTS OF GAMEFLY, INC.

GFL/USPS-T1-8. Have you ever had a discussion with any employee or agent of GameFly about its mail or business? If so, please identify the individuals and state the date, location and substance of the discussion.

RESPONSE:

No.

RESPONSE OF UNITED STATES POSTAL SERVICE WITNESS NICHOLAS F.
BARRANCA TO DISCOVERY REQUESTS OF GAMEFLY, INC.

GFL/USPS-T1-9. Have you ever had a discussion with any employee or agent of Netflix about its mail or business? If so, please identify the individuals and state the date, location and substance of the discussion.

RESPONSE:

At Postal Forums during the past several years, or on other occasions, I may have encountered acquaintances who were then employed by Netflix. My conversations with such individuals would have been social in nature and unrelated to Netflix's mail or business. I do not recall any specific individuals, dates, or the contents of such discussions, if one assumes they did occur.

RESPONSE OF UNITED STATES POSTAL SERVICE WITNESS NICHOLAS F.
BARRANCA TO DISCOVERY REQUESTS OF GAMEFLY, INC.

GFL/USPS-T1-10. Have you ever had a discussion with any employee or agent of Blockbuster about its mail or business? If so, please identify the individuals and state the date, location and substance of the discussion.

RESPONSE:

While I know that several former postal employees have worked for Netflix, I am not familiar with who may have worked for Blockbuster. It is possible that, on certain occasions, I may have encountered previous acquaintances who were employed by Blockbuster at the time. My conversations with such individuals would most likely have been social in nature and unrelated to Blockbuster's mail or business. I do not recall any specific individuals, dates, or the contents of such discussions, if one assumes they did occur.

RESPONSE OF UNITED STATES POSTAL SERVICE WITNESS NICHOLAS F.
BARRANCA TO DISCOVERY REQUESTS OF GAMEFLY, INC.

GFL/USPS-T1-11. Please produce all written communications between you and any employee or agent of Netflix concerning any of the following matters:

- (a) The rates, classifications, mail preparation requirements, or standards for processing offered by the Postal Service to Netflix.
- (b) Any rate or service arrangement (whether formal or informal) established by the Postal Service for Netflix.
- (c) The terms of service established by the Postal Service for the DVD mail of Netflix.
- (d) The Postal Service's actual performance in processing and delivering DVDs to or from Netflix.
- (e) The breakage or loss of DVDs sent to or from Netflix.

RESPONSE:

There are no such communications.

RESPONSE OF UNITED STATES POSTAL SERVICE WITNESS NICHOLAS F.
BARRANCA TO DISCOVERY REQUESTS OF GAMEFLY, INC.

GFL/USPS-T1-12. Please produce all written communications between you and any employee or agent of Blockbuster concerning any of the following matters:

- (a) The rates, classifications, mail preparation requirements, or standards for processing offered by the Postal Service to Blockbuster.
- (b) Any rate or service arrangement (whether formal or informal) established by the Postal Service for Blockbuster.
- (c) The terms of service established by the Postal Service for the DVD mail of Blockbuster.
- (d) The Postal Service's actual performance in processing and delivering DVDs to or from Blockbuster.
- (e) The breakage or loss of DVDs sent to or from Blockbuster.

RESPONSE:

There are no such communications.

1 COMMISSIONER BLAIR: There were no
2 designations of written cross-examination for Witness
3 Barranca. We received one request for oral cross-
4 examination of Witness Barranca from GameFly. Does
5 any other participant wish to engage in cross-
6 examination of this witness?

7 MR. COSTICH: Rand Costich for the Public
8 Representative. We don't have any cross at this time.

9 COMMISSIONER BLAIR: Thank you, Mr. Costich.
10 So, Mr. Levy, please begin your cross-examination.

11 MR. LEVY: Thank you, Commissioner Blair.

12 CROSS-EXAMINATION

13 BY MR. LEVY:

14 Q Mr. Barranca, I'd like to begin with some
15 designations of written cross-examination items we
16 didn't designate before. Do you have before you two
17 sets of documents that are marked as responses by you
18 to GameFly Interrogatories T-1-1 through T-1-12?

19 A No, I don't.

20 Q Would you take a look at those documents to
21 verify that they are, in fact, your answers to the
22 questions. I want to assure you that since this isn't
23 a pop quiz, if you later decide that something
24 wasn't --

25 A No, I have no reason to doubt that they

1 aren't.

2 Q Were those answers prepared by you or under
3 your supervision?

4 A By me, and under my supervision, yes.

5 Q And if you were asked the same questions
6 today, would your answers be the same?

7 A Yes, they would.

8 MR. LEVY: I'm going to approach the
9 witness, take the two sets, give them to the court
10 reporter and ask that they be marked, included in the
11 transcript and admitted into evidence.

12 COMMISSIONER BLAIR: Without objection,
13 they'll be entered.

14 (The documents referred to
15 were marked for
16 identification as Exhibit
17 Nos. T-1-1 through T-1-12 and
18 were received in evidence.)

19 MR. LEVY: Thank you. Does the bench have
20 copies or do we have extra ones?

21 COMMISSIONER BLAIR: They were not
22 distributed. Thank you.

23 BY MR. LEVY:

24 Q Mr. Barranca, would you go to page 3 of your
25 testimony.

1 A Okay.

2 Q Looking at Line 14 appears the sentence, "It
3 strongly implies that the system results from the
4 tendency for the Postal Service to favor large,
5 influential mailers at the expense of smaller mailers,
6 at least in the DVD industry." Where did GameFly say
7 that there is a tendency of the Postal Service to
8 favor large mailers as opposed to, in this case, for
9 favoring a large mailer or a smaller mailer?

10 A In some of the documents I read in the, I
11 can't point to it exactly at this point, but in the
12 memorandum and, I think it was primarily the
13 memorandum, there was the reference that there was a
14 tendency on the part of the Postal Service to make
15 decisions in favor of large mailers at the expense, or
16 in favor of smaller mailers.

17 Q As opposed to? I want to draw a distinction
18 between two concepts.

19 A Sure.

20 Q One concept is a preference for Netflix and
21 Blockbuster over GameFly, and the other is a general
22 tendency to favor large mailers, in general, over
23 small mailers, in general. Do you understand the
24 distinction between those two concepts?

25 A One is more specific relating to the DVD

1 industry, and one is in I guess general terms to all
2 mailers regardless of the category of mail that they
3 enter into the system.

4 Q Are you contending that GameFly made the
5 broader allegation?

6 A It was my opinion in reading it that the
7 reference was there that managers would respond more
8 positively to those mailers that represented a bigger
9 portion of our volume and revenue base, and, as a
10 result, we tended to listen to them and to deal with
11 them in a way that was more responsive than to smaller
12 mailers. Now, as I say, that was my opinion from
13 reading the testimony.

14 Q But it's not based on any document that you
15 can cite.

16 A The memorandum. In reading the memorandum,
17 that's one of the opinions I took away from reading
18 that.

19 Q And where was that in the memorandum?

20 A It was, you know, it was part of the
21 memorandum. I can't point exactly to it.

22 Q Would you go to page 6 of your testimony. I
23 want to direct your attention to the sentence that
24 begins on Line 13. "GameFly's pieces are difficult to
25 find in the mailstream (Netflix uses color and shape

1 to stand out while GameFly does not)", and then the
2 sentence continues. I'm curious about the word shape.
3 I understand that your point about color.

4 A Uh-huh. Yeah.

5 Q What about shape?

6 A Well, obviously, Netflix is a letter size,
7 but it tends to be a larger letter size. It's not a
8 standard No. 10 envelope. You know, the letter size
9 characteristics, if I remember them correctly from our
10 automation days, are 6 1/8 by 11 1/2 by 1/4 inch
11 thick, so that's the maximum size for a letter. The
12 largest population of letters is obviously a lot
13 smaller than that. Netflix' letters are on the outer
14 edge of the definition of a letter, so from a shape
15 standpoint, they tend to be a little larger. While
16 they're still a letter, a little larger than the
17 normal letter screen, letter stream. Obviously, the
18 color is a critical aspect of being able to identify a
19 Netflix piece.

20 Q But my question is focusing on the shape.
21 Isn't GameFly's piece taller and wider than a typical
22 letter?

23 A Yeah, and GameFly has elected to mail at the
24 two ounce flat rate.

25 Q I'm sorry. My question is not the rate at

1 which GameFly entered the piece, but the physical
2 dimensions of the piece. Isn't it true that the
3 GameFly piece and the --

4 A Well, I think the rate has something to do
5 with the dimensions because it makes a little thicker.
6 That's all.

7 Q Isn't it true that the height of the GameFly
8 and Netflix pieces are similar?

9 A You know, I'm not exactly sure how similar
10 they are. I just know that the GameFly piece is a
11 flat and the Netflix piece is a letter.

12 Q If there's a difference in the height
13 between the two pieces, it doesn't stand out, in your
14 mind?

15 A If I had two of them, if I had a Netflix
16 piece on my desk and a GameFly piece on my desk, I
17 obviously could recognize the difference, but in a
18 processing environment, in a culling environment, or
19 in a separation environment, it would be a whole lot
20 easier to recognize the one that stands out the most
21 and recognize the difference between the Netflix piece
22 and the GameFly piece.

23 Q Do you even know which of the two companies'
24 mail pieces is taller?

25 A I would assume that the GameFly piece is

1 taller.

2 Q And your assumption is based on?

3 A Because it's a flat, it's not a letter.

4 Q Did you consider the possibility that it was
5 entered as a flat to minimize breakage and that it
6 could qualify as a letter but for the thickness?

7 A No, I didn't consider that.

8 Q Okay. What about the width of the pieces.
9 Is there something about the actual width of the
10 Netflix piece that stands out in a way that the actual
11 width of a GameFly piece does not?

12 A I'm not actually sure of the actual width of
13 the GameFly piece.

14 Q Do you even know which piece is wider?

15 A I do not know. I would assume that the
16 GameFly piece would be wider.

17 Q And is your assumption based solely on the
18 fact that GameFly enters the piece at flat rates?

19 A That's correct.

20 Q Would you go to page 20 of the same page.

21 A Line 20 or page 20?

22 Q I'm sorry. Line 20. There's a phrase in a
23 sentence which says which implies that the Postal
24 Service is inordinately influenced by the asset value
25 and political or other clout wielded by large,

1 successful businesses. Can you point to anything that
2 GameFly has said that the Postal Service is
3 inordinately influenced by the asset value of a
4 mailer?

5 A Again, similar to the first question you
6 asked me, it was my opinion from reading the
7 memorandum that references were made that the Postal
8 Service tended to respond to customers who provided
9 larger mail volumes, larger revenue to the Postal
10 Service and had cache in the marketplace because of
11 their position in the marketplace. Again, I said it
12 was my opinion from reading it. That's what I took
13 away from it.

14 Q But I'm puzzled. You didn't say volume or
15 revenue to the Postal Service, you said asset value of
16 a customer. Why did you say that?

17 A Again, it was my opinion after having read
18 it that that was the reference, that was the inference
19 that I got from reading the memorandum. I think we
20 addressed the volume and revenue in an earlier part of
21 this.

22 Q Can you point anyplace in GameFly's filing
23 where they had a reference to asset value?

24 A I don't think so.

25 Q The same thing about political clout. Can

1 you point to anything in GameFly's filing where they
2 talked about political clout?

3 A Not that I'm aware of. No.

4 Q Would you go to page 9 of your testimony. I
5 want to focus on the next to the last line, Line 22.
6 You see the word unreasonably?

7 A Yes, I do.

8 Q And that appears in a phrase: because the
9 Postal Service ensured a low level of DVD breakage by
10 agreeing, unreasonably, to process Netflix DVDs
11 manually outside of the automated mailstream. That
12 phrase is not a description of your opinion, but it's
13 a description of what you contend is GameFly's
14 position?

15 A Can I read the whole sentence to get the
16 context, please?

17 Q Yes. Go ahead.

18 A Yeah. Can you restate your question,
19 please?

20 Q Yes. With respect to the word unreasonably,
21 did you mean that as to mean not justified by costs?

22 A I don't think that was the original
23 question. Is that a second question?

24 Q That's the question I'm asking now. I don't
25 remember the original question.

1 A Can you restate that one then, please?

2 Q Yes. The word unreasonably on Line 22, when
3 you used that word, it presumably had some meaning
4 assigned to it that you had in mind, correct?

5 A Yeah. I think the context of that
6 paragraph, if I might, it talks about the decision of
7 Netflix to mail at the letter rate as opposed to some
8 other rate, and the reference, the inference, to me,
9 was that they do that because they have some assurance
10 from the Postal Service that we would process it, it
11 says manually here, I don't agree that it's processed
12 manually, and thus avoiding the potential breakage
13 that might result from a letter being processed on
14 automation.

15 Q But it was your choice to use the word
16 unreasonably. You were using that word as a part of
17 your characterization of GameFly's position.

18 A It's a characterization of GameFly's
19 position. It was my opinion, based on reading it,
20 that GameFly was taking a position that the only
21 reason that Netflix would opt to mail as a letter rate
22 is because we agreed to process it in a manual way, I
23 would argue about the definition of manual, and thus
24 avoid any potential breakage that might happen. It
25 was my opinion in reading the document, the

1 memorandum, that GameFly would say that that is
2 unreasonable for the Postal Service to do.

3 Q Unreasonable because?

4 A I don't know. Unreasonable. My using the
5 word unreasonable is because I think GameFly viewed it
6 as unreasonable, that we had no basis for sorting it
7 out manually and separating it out manually simply to
8 avoid damage, and we are not doing that simply to
9 avoid damage.

10 Q I'm sorry. I'm trying to clarify what, in
11 your mind, you thought GameFly was characterizing as
12 unreasonable, and in that context, I'm asking you to
13 define the word unreasonably as you meant it in that
14 sentence.

15 A That we were extracting it from the
16 mailstream for not good reason.

17 Q As in not justified by costs?

18 A That's right. I'm not saying that we're
19 doing that, I'm saying that was my characterization of
20 what GameFly's complaint says.

21 Q Okay. Thanks. Would you go to the next
22 page. On Lines 2 and 3 appears the phrase a not
23 significant amount if processed on machines. That's
24 referring to the not significant amount of Netflix DVD
25 return volume?

1 MR. FOUCHEAUX: A clarification. I believe
2 the testimony says not insignificant amount.

3 MR. LEVY: Mr. Foucheaux is right, I think.
4 Thank him for that.

5 THE WITNESS: Can you repeat the question?

6 MR. LEVY: Yes. First of all, do you see
7 that passage?

8 THE WITNESS: On page 10?

9 MR. LEVY: Yes.

10 THE WITNESS: Yes, I do.

11 BY MR. LEVY:

12 Q What percentage of Netflix' return mail is
13 currently processed manually?

14 A I think, well, there's two sources. If we
15 look at the Christensen study, they estimate it about
16 77 percent, if I'm not mistaken, on the return side,
17 and I think Troy in previous testimony talked about
18 upwards of 80 percent. Again, I would disagree with
19 the term manually processed.

20 Q By Troy, you mean Troy Seanor, the witness
21 who appeared on the stand just before you?

22 A That's true. Yes. Yes.

23 Q Were you here when he testified?

24 A Yes, I was.

25 Q Well, what percentage of Netflix return mail

1 is not processed on automated letter processing
2 machines such as DBCS and AFCS?

3 A I think I just answered that; it was 77 to
4 80 percent based on the two sources that we have.

5 Q And you have no reason to disagree with
6 those numbers?

7 A I have no reason to disagree. I do disagree
8 with the classification of manual process. Having
9 been in processing all my life, I have certain things
10 I assume when people talk about manual processing.

11 Q Would you go to Line 15 on the same page?

12 A Yes.

13 Q And there appears the sentence, "In
14 particular, Gamefly has apparently been more motivated
15 by the desire to minimize theft and loss than
16 Netflix," do you see that?

17 A Yes. Yes, I do.

18 Q Have you ever discussed this issue with
19 anyone at Gamefly?

20 A No. I've never had a conversation with
21 anyone at Gamefly.

22 Q Can you go to page 11 of your testimony? I
23 want to direct you to Line 5 where the phrase
24 "similarly situated" appears, do you see that?

25 A Yes, I do.

1 Q Now, some people use "similarly situated" as
2 a legal term in discrimination cases. Are you
3 offering a legal opinion as to whether Gamefly and
4 Netflix are similarly situated in the legal sense?

5 A I don't have a basis for offering a legal
6 position.

7 Q Can you go to page 15 of your testimony? On
8 Lines 21 and 22, you say, "As witness Belair and
9 Seanor demonstrate, operations practices involving the
10 processing of DVD mail are supported by sound reasons
11 and are well justified." Now, one of the sound
12 reasons is that DVD mail can jam automated letter
13 processing equipment, correct?

14 A That's one of the reasons. I wouldn't say
15 it's the primary one.

16 Q Did you hear Mr. Seanor's testimony about
17 the impact of jams in letter processing?

18 A Yes, I did. He talked about how long it
19 took to clear jams regardless of what caused it.

20 Q And do you agree with him?

21 A I have no basis for disagreeing with him on
22 that, but the primary reason is not because of delays
23 and jams. I mean, that's an ancillary reason. The
24 primary reason for me saying are well-supported by
25 sound reason is that the activity of separating or

1 culling, depending on where it's done, does not add
2 actual cost. It actually saves costs, and that's one
3 of the things that's sort of misleading through this
4 whole discussion.

5 Every time we talk about the manual
6 processing, we talk about it in terms of cost. In
7 reality, it's a reduction of cost. It's a savings.
8 It's more reasonable to do that and avoid costs than
9 it would be to process it through the most efficient
10 processing operations.

11 Q And one of the costs to processing it
12 through automated letter processing is a jam rate?

13 A Yes. All mail has an inherent jam rate
14 associated with it.

15 Q But if I put two pieces of 8½ x 11 paper,
16 fold them in three and stick them in an ordinary
17 business envelope, that is likely to have a lower jam
18 rate than a Netflix DVD mailer, isn't it?

19 A It's probably likely to have a lower jam
20 rate than a larger piece that might have a content
21 intended to be rigid, which would be a DVD piece, but
22 there would be other things that would have similar
23 consequences.

24 Q Can you go to page 22 of your testimony? I
25 want to direct your attention to the last full

1 sentence on the page, which is on Lines 24 to 25, "In
2 addition to complaining that it pays too much for
3 postage, Gamefly asserts that Netflix pays too
4 little." Where did Gamefly ever assert that Netflix
5 pays too little?

6 A That's an inference on my part, an opinion
7 by saying Netflix should pay a non-machinable
8 surcharge. Obviously, that tells me it's the position
9 of Gamefly that if they could pay more, then they're
10 therefore paying too little. There are many documents
11 that were put forth that are referenced in these two
12 books, and I read everything that was given to me.
13 Although, I can't say I've memorized everything that
14 was given to me.

15 There is a theme that runs through this
16 pointing to opinions, emails from staff at
17 headquarters and that the RCSC and at our Engineering
18 Department that there might a condition under which we
19 should be charging a non-machinable surcharge on the
20 return piece for Netflix. Based on the prevalence of
21 that runs through here, it was my assumption that
22 those are in there for the purpose of saying they pay
23 too little. Therefore, they ought to pay more.

24 Q Let me posit two different concepts, and
25 then I'm going to ask you a question about them. One

1 concept is that Netflix's rate is too low in relation
2 to the costs of serving it, too low in an absolute
3 sense. The other concept is that Netflix's rate is
4 too low in the relative sense, that is compared to
5 Gamefly's rate.

6 A Okay.

7 Q Do you understand the distinction between
8 discrimination and absolute reasonableness?

9 A You're asking me for a legal definition.

10 MR. FOUCHEAUX: Yes, and I would object to
11 that, and Mr. Presiding Officer. I think Mr. Levy is
12 asking for a legal opinion. I think we've already
13 established that Mr. Barranca is not testifying today
14 as a legal expert.

15 COMMISSIONER BLAIR: Mr. Levy, do you want
16 to rephrase your question?

17 MR. LEVY: Yes, I do.

18 BY MR. LEVY:

19 Q Let me give you two statements. One is the
20 Commission should make Netflix pay more postage than
21 the single-piece rate. The other statement is the
22 Commission should narrow the gap between what Netflix
23 pays and what Gamefly pays. Do you understand the
24 different between those two concepts?

25 A Yes, I understand the different. I'm not a

1 pricing expert. That could probably make a
2 determination as to what the difference should be.

3 Q On page 22, Lines 24 to 25, by
4 characterizing Gamefly's assertion as that Netflix
5 pays too little, are you referring to the first of
6 those meanings that I just gave you?

7 A I was referring to the first of those
8 meetings, yes, based on having looked all the evidence
9 that was put into place that seemed to proffer the
10 position that they should be charging more in the form
11 of a non-machinable surcharge.

12 Q Now, where has Gamefly asked that the
13 Commission force Netflix to pay a non-machinable
14 surcharge?

15 A As I said, I didn't say that they had. I'm
16 sure that all those documents have been put forth as
17 for a purpose, and many of those documents proffer
18 that position, so I think that would be an important
19 aspect of why the document exists.

20 Q So you read the documents, and you thought
21 that Gamefly might use them to ask for a non-
22 machinable surcharge for Netflix?

23 A To demonstrate that they weren't paying
24 enough. Whereas, I think if you look at all the
25 processing that is avoided, I don't think you could

1 support that position.

2 Q I mean, you're not testifying that the
3 Postal Service loses money on each piece of Netflix
4 mail, do you?

5 A No, of course not.

6 Q And you're not testifying that the Postal
7 Service loses money on the average piece of Netflix
8 mail?

9 A No.

10 Q Could you go to page 31 of your testimony?
11 There you have a discussion of a letter from Andrew
12 German. Do you see that?

13 A Yes, I see it. Yes.

14 Q And that's the same letter that I discussed
15 with Mr. Seanor?

16 A That's correct.

17 MR. LEVY: May I consult with my colleagues
18 for a minute? I may be done, but I just want to
19 verify that?

20 COMMISSIONER BLAIR: Please go ahead.

21 MR. LEVY: Thank you.

22 (Pause.)

23 MR. LEVY: Thank you, Mr. Seanor. That's
24 all I have.

25 THE WITNESS: Barranca.

1 MR. LEVY: I've got Seanor and Barranca on
2 the brain right now. Sorry.

3 THE WITNESS: I'm fine with that. I don't
4 know if Mr. A is.

5 MR. LEVY: Thank you.

6 COMMISSIONER BLAIR: Mr. Costich. Do you
7 want to engage in re-cross-examination?

8 MR. COSTICH: No, thank you, Commissioner
9 Blair.

10 COMMISSIONER BLAIR: I have a question for
11 Mr. Barranca. Are you familiar with the November 8,
12 2007, audit report that was issued by the Postal
13 Service's Office of Inspector General regarding the
14 review of Postal Service first class permit reply
15 mail? It was directed to Michael K. Plunkett, Acting
16 Vice President, Pricing and Classification; Susan
17 Plunky, Vice President Customer Service.

18 THE WITNESS: Yes. The name threw me off.
19 It's the GAO audit.

20 COMMISSIONER BLAIR: Right.

21 THE WITNESS: Okay. Sure.

22 COMMISSIONER BLAIR: Are you familiar with
23 it?

24 THE WITNESS: I've read it. Yes, I have.

25 MR. FOUCHEAUX: Clarification. I think the

1 witness misspoke. It's not the GAO audit.

2 THE WITNESS: I'm sorry.

3 MR. FOCHEAUX: It's the OIG audit.

4 THE WITNESS: It's the OIG audit, yes.

5 COMMISSIONER BLAIR: The record will note
6 that, please. Did the Postal Service change any of
7 its operations after the release of this IG audit?

8 THE WITNESS: Not that I'm aware of.

9 COMMISSIONER BLAIR: So the recommendations
10 that were contained in the audit were not adopted?

11 THE WITNESS: Well, if I remember correctly,
12 the recommendations that were in the audit actually
13 didn't deal with the processing operations of the
14 subject that they were examining. It was whether or
15 not what we were doing was consistent with the rates
16 we were charging, and I think the OIG did conclude
17 that on the outbound, we were charging the appropriate
18 automation compatible rate and on the return side,
19 based on the machinability criteria that was in force
20 at that time that the pieces met the machinability
21 criteria.

22 The recommendation I think was to go ahead
23 and from a domestic mail manual standpoint to reassess
24 what was in the DMM to take into account any issues
25 that the Postal Service might determine needed to be

1 considered as a result of this DVD product, but it
2 really didn't question the operational aspects, that
3 it talked more the classification aspects of the
4 products that were offered.

5 COMMISSIONER BLAIR: I believe this is
6 already included for the record, but I would just ask
7 that the recommendations on page 10 of our report be
8 included at this time, and just for my better
9 understanding of your response, Mr. Barranca, you're
10 saying that it did not impact operations, that it's
11 more of a pricing and classification issue?

12 THE WITNESS: I think it was more of a
13 pricing. They did make some estimate of what the
14 potential savings were if we charged a non-machineable
15 surcharge. I don't think it said anything about what
16 the savings were if we changed the operations. That's
17 sort of the distinction I'm asking.

18 COMMISSIONER BLAIR: And who made these
19 changed in classification and pricing?

20 THE WITNESS: I don't think anything has
21 been done as a result of that audit.

22 COMMISSIONER BLAIR: So the recommendations
23 were not accepted?

24 THE WITNESS: You know, I didn't respond to
25 it. I read it, so I don't know if I'm the best person

1 to talk about whether they were responded to or not.
2 It just appeared to me that there hadn't been direct
3 changes that resulted from that audit as of yet.

4 COMMISSIONER BLAIR: Because I thought you
5 said earlier that they had been accepted.

6 THE WITNESS: Did I?

7 COMMISSIONER BLAIR: I bet maybe I
8 misunderstood you.

9 THE WITNESS: I don't think I used the word
10 "accepted."

11 COMMISSIONER BLAIR: Okay. The record will
12 note your clarification to your answer.

13 MR. FOCHEAUX: Mr. Presiding Officer, if I
14 could clarify? I think the report does include a
15 response by the Postal Service if the question is was
16 there a response. If the question is did we follow
17 the recommendations, that's another question.

18 COMMISSIONER BLAIR: Okay. Thank you very
19 much for that clarification, counsel. Did you follow
20 the recommendations?

21 THE WITNESS: Not to my knowledge, we did.

22 COMMISSIONER BLAIR: Thank you. I have no
23 further questions. Any procedural issues or anything
24 before we excuse the witness? I take it from today's
25 proceedings again we will not need an in camera

1 proceeding for testimony from this witness, is that
2 correct?

3 MR. FOUCHEAUX: That is correct.

4 COMMISSIONER BLAIR: Well, if there are no
5 more questions for this witness, the witness will be
6 excused.

7 MR. FOUCHEAUX: Mr. Presiding Officer, could
8 we have 10 minutes to consult and decide if we need
9 some redirect?

10 COMMISSIONER BLAIR: I'm sorry. Absolutely.
11 Ten minutes would be fine.

12 MR. FOUCHEAUX: Thank you.

13 (Whereupon, a short recess was taken.)

14 COMMISSIONER BLAIR: The hearing will come
15 back to order. Did you have some time with your
16 witness?

17 MR. FOUCHEAUX: Yes, Mr. Presiding Officer,
18 and thank you. I just have some limited questions

19 COMMISSIONER BLAIR: I was going to say that
20 sounds good. If you were going to engage in any
21 length, I thought I would confer with my colleagues
22 about adjourning for an hour for lunch, but it's going
23 to be short, I think that might be in our best
24 interest in to get this done as expeditiously as
25 possible.

1 MR. FOUCHEAUX: If I were going to engage in
2 lengthy redirect examination, I think my colleagues
3 would drag me out of the room, so you needn't fear
4 about that.

5 COMMISSIONER BLAIR: Well, we don't want to
6 see that happen, so please proceed.

7 MR. FOUCHEAUX: That's all right. Thank
8 you.

9 REDIRECT EXAMINATION

10 BY MR. FOUCHEAUX:

11 Q Mr. Barranca, the presiding officer asked
12 you some questions about the OIG report, which is in
13 the record, and you made reference to cost estimates
14 in the OIG report. Do you have an opinion as to the
15 reliability of those cost estimates?

16 A Well, in the process of preparing for this
17 proceeding and having looked at that report, I did
18 confer with some people at headquarters on the
19 operations side and the finance side asking them to
20 what extent they were able to replicate what the
21 estimates were from the OIG, and their assessment was
22 they didn't understand how they came up with those
23 numbers, and they weren't able to actually determine
24 the accuracy of those numbers.

25 MR. FOUCHEAUX: Thank you. That's all I

1 have, Mr. Presiding Officer.

2 COMMISSIONER BLAIR: Mr. Levy?

3 MR. LEVY: No re-cross.

4 COMMISSIONER BLAIR: Mr. Costich?

5 MR. COSTICH: No re-cross. Thank you,
6 Commissioner Blair.

7 COMMISSIONER BLAIR: My colleagues on the
8 bench? Well, if that is the case then, Mr. Barranca,
9 you're excused. We appreciate your appearance here
10 today and your contributions to the record

11 (Witness excused.)

12 COMMISSIONER BLAIR: Our next proceeding is
13 scheduled for October 28 at 9:30 in the Commission's
14 hearing room, and that will be a hearing on Gamefly's
15 sur-rebuttal testimony. As per our procedural
16 schedule, which was published, the filing of Gamefly's
17 sur-rebuttal testimony is due on the 21st, and the
18 notice of intent to conduct to oral cross-examination
19 of the sur-rebuttal testimony is due on the 25th of
20 October 2010, so if there are no more questions or
21 procedural issues, the hearing is now adjourned.

22 (Whereupon, at 12:45 p.m., the hearing in
23 the above-entitled matter was adjourned, to reconvene
24 on Thursday, October 28, 2010, at 9:30 a.m.)

25 //

REPORTER'S CERTIFICATEDOCKET NO.: [✓] C2009-1
Complaint of GameFly, Inc.


CASE TITLE: ✓

HEARING DATE: 10/14/10

LOCATION: WDC

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes or digital recording reported by me at the hearing in the above case before

Date: 10/14/10



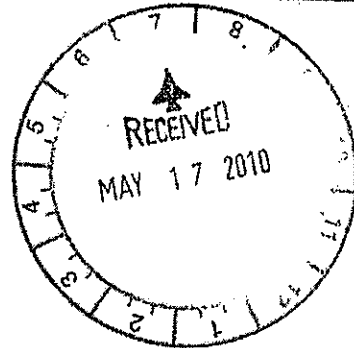
Gabriel Gheorghiu
Official Reporter
Heritage Reporting Corporation
Suite 600
1220 L Street, N.W.
Washington, D.C. 20005-4018

GFL-CX-



May 17, 2010

Mr. David M. Levy, Esq.
Venable LLP
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Washington, DC 20004
DMLevy@venable.com



RE: Processing of GameFly Mail

Dear Mr. Levy:

This letter outlines the conditions that would be needed to provide GameFly with the manual processing it seeks in its Complaint. If the Postal Service and GameFly agree, the Postal Service is prepared to begin providing this processing to GameFly based on local determinations and upon the conditions indicated below. Please note that the Postal Service plan is operational in nature, not an offer of settlement that would depend upon withdrawal of GameFly's Complaint currently pending at the Postal Regulatory Commission (PRC Docket No. C2009-1).

The Postal Service cannot institute mail processing that includes manual culling unilaterally. Local processing of DVD mail through manual culling has evolved over time and depends on mutual cooperation between the mailer and the Postal Service. The DVD mail appropriate for manual culling has certain characteristics, including large volume, high density at destinations, multiple entry and return points, and relatively short travel distances. If GameFly wants to get similar mail processing, it needs to undertake comparable efforts to make it possible.

It is important to understand that the processing of DVD mail reflects the discretion of local mail processing operations, and not a centralized national policy. You will find that the processing of DVD mail differs among postal facilities, depending on the specific conditions of each local mail processing operation. Even in mail processing facilities where postal employees manually cull DVD mail, the employees are not able to identify and manually cull every piece of DVD mail otherwise targeted for manual culling that passes through their facility.

Currently, mail processing employees at the local level have the discretion to cull DVD mail pieces manually into a separate mail tray reserved for a DVD mailer if they believe that local conditions make manual culling a more appropriate method of processing. The same discretion can be applied to manually cull GameFly mail pieces, provided that GameFly takes the steps listed below.

- GameFly must color or mark its mail piece to make it more easily and uniquely identifiable. This is necessary because it enables Postal Service mail handlers to identify and cull GameFly mail pieces when possible.¹
- GameFly must employ a mail piece that qualifies for the one-ounce First-Class Mail letter price. This will enable GameFly to enjoy the same rates as other DVD mailers, and allow the Postal Service to employ the same processes within the same mail stream.
- GameFly must take delivery of its mail via caller service at approximately 130 locations chosen to minimize the distance return mail pieces travel in the mail stream. We can work with you to identify those locations best suited to GameFly's mail flow. Depending on mail volume and density, multiple pickups per day may prove necessary.
- GameFly needs to enter outbound pieces deep enough into the mail stream so that total one-way distance in the mail drops to approximately the same short distance that other DVD mail pieces attain. Other DVD mailers accomplish this by expedited plant verified drop shipment. We need to work cooperatively with GameFly to achieve this goal, which may require expansion of Express Mail open and distribute, GameFly's current practice.

The Postal Service understands that the plan described above will present difficult choices to GameFly in planning and managing its operations. We are willing to explore any particular problems and to seek reasonable alternatives that may be available. We are available to discuss these matters at your convenience.



R. Andrew German
Managing Counsel, Pricing and Product Development Law

¹ Employees involved in local mail processing operations exercise discretion in determining when to cull DVD mail. Culling is optional, until such time as its mail reaches sufficient density that attempts to cull all pieces are made. Employees can commence making similar judgments for GameFly pieces only after GameFly mail pieces take on a unique, contrasting coloration that makes them as recognizable as other DVD mail pieces.

GFL-CX- ~~116~~ 6

RESPONSE OF THE UNITED STATES POSTAL SERVICE
TO DISCOVERY REQUEST OF GAMEFLY, INC.

GFL/USPS-106. Please refer to "Pacific Area DVD SOP.pdf" (Bates number GFL0000527-34) and Eastern Area SOP# 05-05-4 (Bates number GFL0000535-42).

- (a) When were the Pacific and Eastern Area SOPs related to the processing of inbound Netflix pieces rescinded?
- (b) Why were the Pacific and Eastern Area SOPs rescinded?
- (c) Please also refer to the following portion of the Postal Service's response to GFL/USPS-18: "The Postal Service expects that the amount of manual processing of Netflix mail is likely at least as large as was set forth in the OIG Report, though no specific percentages are available." Please confirm that current processing practices for Netflix inbound pieces in these two areas are substantially similar to those described in the Pacific and Eastern Area SOPs. If not confirmed, please explain fully and reconcile with the USPS response to GFL/USPS-18.
- (d) Please produce all SOPs or other rules, whether issued by the Pacific and Eastern Areas or subordinate offices in those Areas, that have replaced these SOPs. If the Pacific and Eastern Area SOPs have been replaced with no rules whatsoever, and field processing decisions are now left to the unrestricted discretion of local processing employees, please state so.

RESPONSE:

- (a)-(b) The reference to the Eastern Area SOP being rescinded was an error.

The Pacific Area SOP, specifically addressing Netflix processing, was rescinded on December 5, 2007, due to increasing volume from other DVD vendors being received and processed.

- (c) Confirmed.
- (d) With regard to the Eastern Area, see the response to part (a). With regard to the Pacific Area, no formal SOP has been issued to replace the rescinded Area SOP; however, as noted in the response to part (c),

RESPONSE OF THE UNITED STATES POSTAL SERVICE
TO DISCOVERY REQUEST OF GAMEFLY, INC.

processing of Netflix in the Pacific Area continues to be substantially
similar to that set forth in the SOP.

RESPONSE OF THE UNITED STATES POSTAL SERVICE
TO DISCOVERY REQUEST OF GAMEFLY INC.

GFL/USPS-106. Please refer to "Pacific Area DVD SOP.pdf" (Bates number GFL0000527-34) and Eastern Area SOP# 05-05-4 (Bates number GFL0000535-42).

(e) What percentage of mail volume destines in the Pacific and Eastern Areas?

(f) What percentage of Netflix mail volume destines in the Pacific and Eastern Areas?

RESPONSE:

(e) The percentage of mail volume destinating in the Pacific Area was 12.57 percent in FY2009 and 12.76 percent in FY 2008. The percentage of mail volume destinating in the Eastern Area was 12.28 percent in FY2009 and 12.21 percent in FY2008.

(f) The Postal Service has no data that would provide percentages of Netflix volume destinating in the Pacific and Eastern Areas.

GFL/USPS-67. Please refer to Paragraph 35 of the Postal Service's Answer to GameFly's Complaint, which states:

However, Respondent admits that some manual culling of DVDs being returned from customers may occur in local mail processing by personnel at the AFCS; bypassing automated processing is motivated by an interest in getting all mail processed during the available window so as to meet service standards and would accordingly apply to a lot of mail that is otherwise capable of being processed on automated equipment.

Please refer further to the Postal Service's response to GFL/USPS-18, which states:

The Postal Service expects that the amount of manual processing of Netflix mail is likely at least as large as was set forth in the OIG Report, though no specific percentages are available.

Finally, please refer further to Paragraph 36 of the GameFly Complaint, which states:

A report by the Postal Service's Office of Inspector General in November 2007 found that 70 percent of the two-way DVD mailers from one unnamed DVD rental company received manual processing for this reason. USPS Office of Inspector General, Audit Report No. MS-AR-08-001, Review of Postal Service First-Class Permit Reply Mail (November 8, 2007).

(a) Does the Postal Service believe that the primary reason that at least 70 percent of Netflix inbound mail is processed manually is to get all mail processed during the available window so as to meet service standards?

(b) Please explain fully why a large portion of Netflix mail must be handled manually to meet service standards.

RESPONSE:

a. No. It should be noted that the term "manual processing" may be used in different contexts, and carry different meanings. For example, the term "manual processing" is often used in the context of Netflix inbound mail to simply refer to

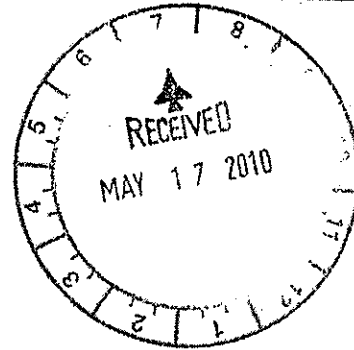
manual culling. In other contexts, "manual processing" may refer to pure end-to-end manual handling, including manual sortation.

- b. The Postal Service disagrees with this statement.



May 17, 2010

Mr. David M. Levy, Esq.
Venable LLP
575 7th Street, NW
Washington, DC 20004
DMLevy@venable.com



RE: Processing of GameFly Mail

Dear Mr. Levy:

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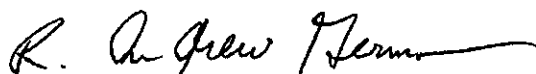
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- GameFly must color or mark its mail piece to make it more easily and uniquely identifiable. This is necessary because it enables Postal Service mail handlers to identify and cull GameFly mail pieces when possible.¹
- GameFly must employ a mail piece that qualifies for the one-ounce First-Class Mail letter price. This will enable GameFly to enjoy the same rates as other DVD mailers, and allow the Postal Service to employ the same processes within the same mail stream.
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R. Andrew German
Managing Counsel, Pricing and Product Development Law

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Revised

US Postal Service
Eastern Area

Standard Operating Procedure

SOP# 05-05-4

March 3, 2005

Processing Netflix Mailings

Objective:

Efficient processing of time sensitive mail requires the identification of additional opportunities to optimize handling of uniquely packaged items.

The Netflix business model involves presenting outgoing mailings, using automation compatible envelopes containing the DVD(s) ordered by the customer, to the BMEU. It also requires customers return fragile DVDs to one of a handful of Netflix processing centers in the same envelope which can be converted to a uniquely identifiable, DVD return mailer. Regardless of which Netflix processing center they are returned to, Netflix records them as checked in and ready for rental. The Netflix business model also requires minimal breakage during transport of these return items. These returned DVDs can be subject to breakage if improperly fed through our automated processing machinery.

The objective of this SOP is to maximize processing efficiency, while minimizing potential breakage, of Netflix mailings (outgoing and return).

Procedures

Outgoing Pieces

The outgoing Netflix piece, a DVD mailer originating at Netflix and destinating to each customer, is **automation compatible**. The DVD placement is in the lead end (front end) of a red, automation compatible, letter-sized reusable envelope with permit imprint designating it as First Class, U.S. Postage PAID from Netflix (see Attachment #1).

The Netflix outgoing envelope was extensively tested for automation compatibility on Delivery Barcode Sorters (DBCS) in 2003 with acceptable jam/breakage rates. Outgoing Netflix pieces must be processed using DBCS machinery and must be kept in the delivery point sequence (DPS) mailstream

PUBLIC

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Incoming Pieces

The incoming Netflix piece, the converted original DVD mailer, originating from the customer and destinating to Netflix, is **not automation compatible**. The DVD placement is in the **trail end** (back end) of a red, letter-sized envelope with permit imprint designating it as First Class, U.S. Postage PAID to Netflix.

To minimize jams and DVD breakage, 775 Flat tubs (see *Attachment #2*) are to be set up adjacent to every piece of equipment (culling belt, AFCS, Flyer, etc...) which may be used to Processing Netflix Mailings – SOP OS-05-4 Page 2

initially cull Netflix returns. Items in tubs are to be subsequently *riffled* into **sleevable Extended Managed Mail Letter Trays (EMM)** (see *Attachment #3*) to ensure accuracy prior to containerization.

As Netflix believes that stacking weight is also a contributor to damaged DVDs, Mail Handlers will **sleeve the Extended Managed Mail Letter Trays (EMM)** and stack them into General Purpose Mail Containers (GPMCs) as shown in *Attachment #4*. Items in the direct container are to be labeled for direct dispatch to the processing and distribution facility serving the closest Netflix processing center (see *Attachment #5*).

In some cases, delivery will be to a PO Box(s) / Caller Service within the same processing facility. In that event, these Netflix return pieces will be a direct extraction from the AFCS, and will be available to the customer in a shortened time frame.

Loose Items

Loose disks which have become separated from the mailpiece during handling/processing should be collected daily and returned to the closest NetFlix processing center. Supervisors are to make the disks available along with inbound (BRM) mail for pickup; however, they are not subject to postage-due fees as return postage has already been paid by Netflix.

Biohazard Detection System (BDS) Issues

The processing window for an AFCS Biohazard Detection System (BDS) testing cycle is 90 minutes. You must ensure that the Mail Inventory Control Tracking (MICT) procedures, Integrated Emergency Management Plan (IEMP) and Continuity of Operations Plan (COOP) for your installation reflect identification of unique processing of the Netflix return mailer and established processes for handling this mail and contacting Netflix in a BDS alert environment.

PUBLIC

GFL0000536

RESPONSIBILITIES:

Senior Plant Manager/Plant Manager

The Senior Plant Manager/Plant Manager/Postmaster/OIC is responsible for ensuring that this SOP is implemented in their facilities.

Senior Manager, Distribution Operations/Manager, Distribution Operations/Supervisor, Distribution Operations

Managers of Distribution Operations and Supervisors will ensure that sleeveable EMM trays are to be set up adjacent to every piece of equipment which may be used to process Netflix return pieces, and that filled trays are sleeved, containerized and dispatched to the processing and distribution facility serving the closest Netflix processing center, consistent with this SOP. Loose DVDs are to be returned to Netflix daily as outlined.

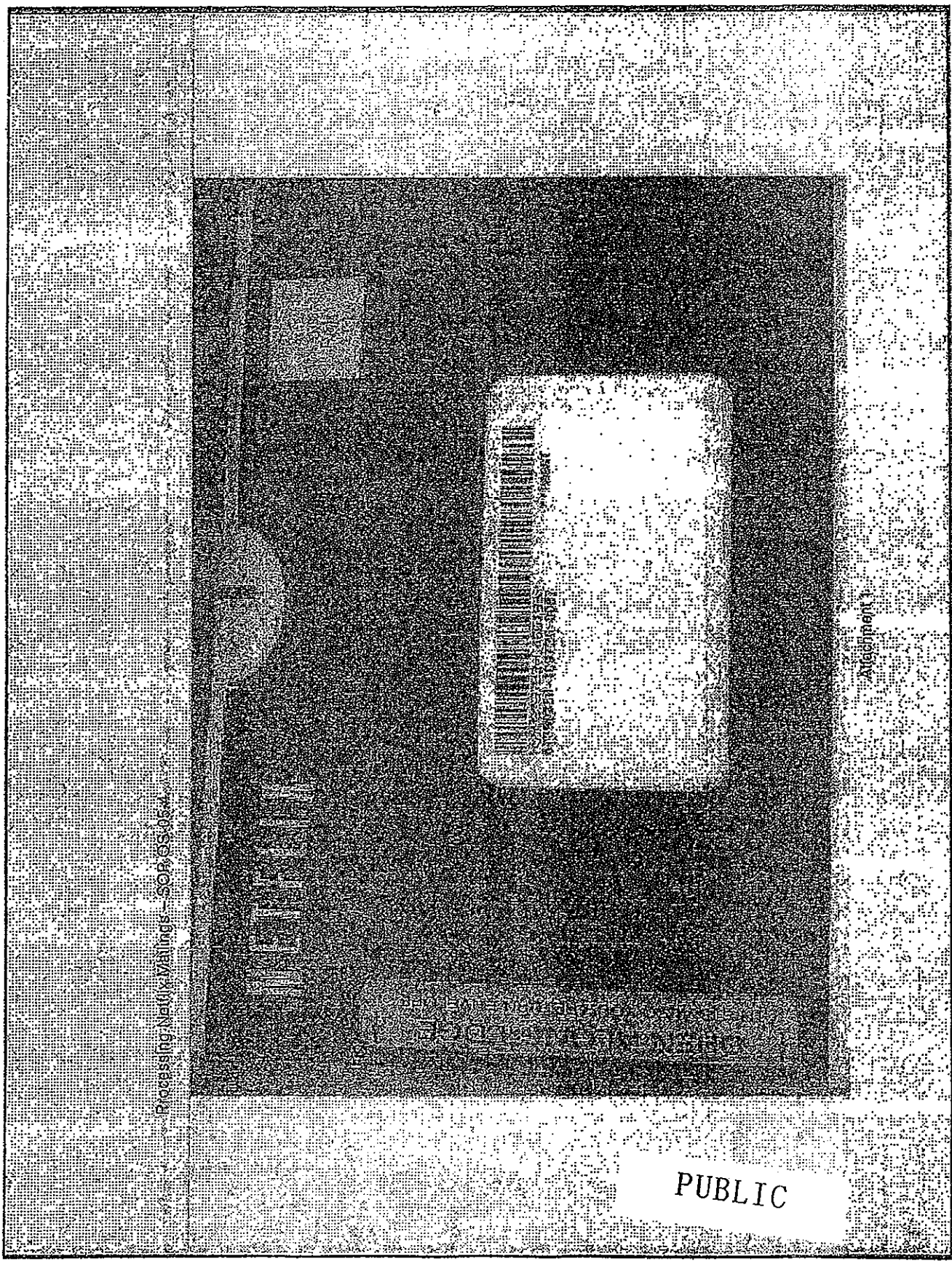
Processing Netflix Mailings -- SOP OS-05-4 Page 3

Manager, In-Plant Support

Managers of In-Plant Support are to ensure that Mail Inventory Control Tracking (MICT) procedures, the Integrated Emergency Management Plan (IEMP) and Continuity of Operations Plan (COOP) for the installation reflect identification of this situation and established processes for handling this mail and contacting with the customer in a BDS alert environment.

PUBLIC

GFL0000537

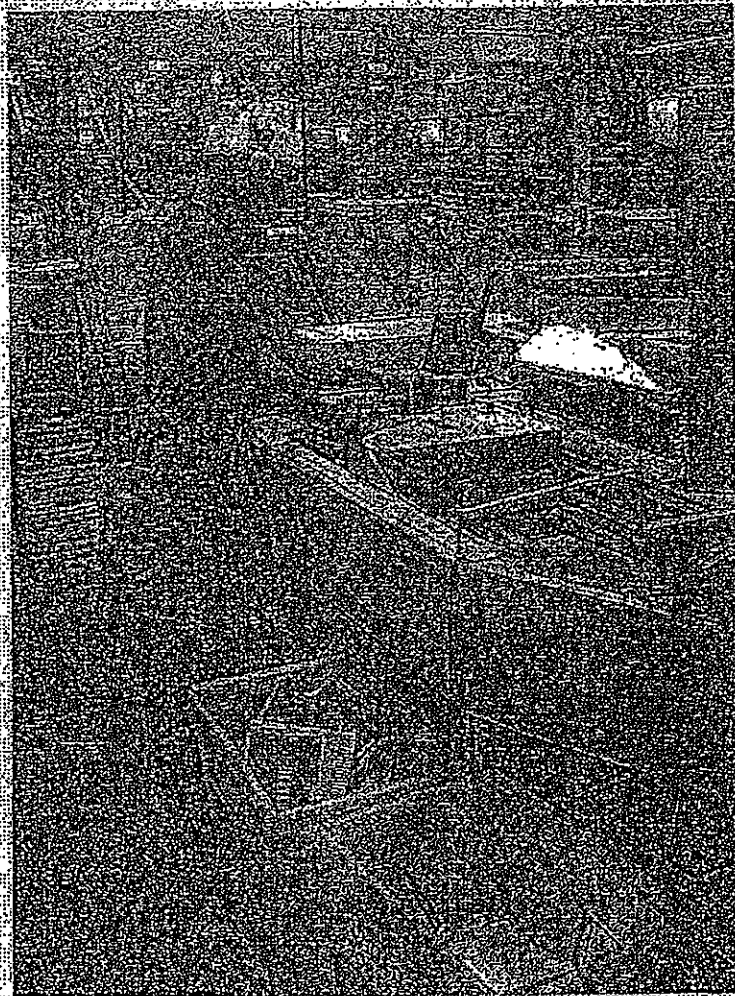


Processing Native Mailings - SOR 05-05-4

Attachment

PUBLIC

Processing Netflix Mailings - SOP OS-05-4



Attachment 2

PUBLIC

GFL0000539

Processing Netlix Mailings - SOP OS-05-4



Attachment 3

PUBLIC

GFL0000540



Attachment 4

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Netlix Processing Centers (Eastern Area)

HUB NAME	GATHERSBURG	CLEVELAND	PHILADELPHIA
HUB	MD	CLEVELAND, OH	PHILADELPHIA, PA
ADDRESS	2 Choke Cherry Road Rockville, MD 20850-4030	JENNINGS FREEWAY BUSINESS CENTRE VI, 4800 HINCKLEY INDUSTRIAL PARKWAY CLEVELAND, OHIO, 44109	PROVIDENCE BUSINESS PARK 485 SCHELL LANE PHOENIXVILLE, PA 19460
MANAGER	[REDACTED]	[REDACTED]	[REDACTED]
EMAIL	NF-011	NF-008	NF-014
MAIN PHONE	301-977-[REDACTED]	216-635-[REDACTED]	610-917-[REDACTED]
FAX NUMBER	301-977-[REDACTED]	216-635-[REDACTED]	610-917-[REDACTED]
CELL PHONE	301-266-[REDACTED]	216-630-[REDACTED]	215-272-[REDACTED]
HUB NAME	GREENSBORO	LOUISVILLE	COLUMBIA
HUB	GREENSBORO, NC	LOUISVILLE, KY	COLUMBIA, SC
ADDRESS	AIR PARK EAST-B 423 GALLIMORE DAIRY ROAD, SUITE A GREENSBORO, NORTH CAROLINA, 27409	4735 Poplar Level Road, Suite 6 Louisville, KY 40213	7601 Shop Road, Suite #C Columbia, SC 29204
MANAGER	NF-009	NF-005	NF-001
EMAIL	[REDACTED]	[REDACTED]	[REDACTED]
MAIN PHONE	336-666-[REDACTED]	502-969-[REDACTED]	803-765-[REDACTED]
FAX NUMBER	336-666-[REDACTED]	502-969-[REDACTED]	803-765-[REDACTED]
CELL PHONE	336-466-[REDACTED]	502-523-[REDACTED]	803-535-[REDACTED]

HUB NAME	COLUMBIA	PITTSBURGH	
HUB	COLUMBIA, SC	PITTSBURGH, PA	
ADDRESS	1601 Shop Road, Suite #C, Columbia, SC 29204	2022 Chateau Street, Pittsburgh, PA 15233-1139	
MANAGER	NF-001	[REDACTED]	NF-012
EMAIL	[REDACTED]	[REDACTED]	[REDACTED]
MAIN PHONE	803-765-[REDACTED]	[REDACTED]	
FAX NUMBER	803-765-[REDACTED]	[REDACTED]	
CELL PHONE	803-535-[REDACTED]	412-443-[REDACTED]	

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